



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

an

BJG
Docket No: 4892-10
28 March 2011

[REDACTED]
[REDACTED]
ALEXANDRIA, VA 22304

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested special selection board (SSB) consideration for the Fiscal Year (FY) 1997 through 2001 Marine Corps Reserve (Active Reserve) Lieutenant Colonel Selection Boards or, in the alternative, promotion to lieutenant colonel with the date of rank and effective date you would have been assigned, had you been promoted pursuant to selection by the FY 1997 promotion board. Finally, you impliedly requested that your retired grade be changed accordingly, from major to lieutenant colonel. In your previous case, docket number 3738-00, your request for SSB consideration was denied on 10 August 2000. In accordance with the direction of the United States District Court for the District of Columbia, this request was reconsidered.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 March 2011. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies, and the Board's files on your prior cases (docket numbers: 1483-96, 154-98, 5693-98, 7291-98 and 3738-00). The Board also considered the advisory

opinion from the Headquarters Marine Corps Promotion Branch (MMPR), dated 15 November 2010, and the MMPR electronic mail transmissions dated 22 and 23 February 2011, copies of which are attached. Finally, the Board considered your counsel's rebuttal letters dated 8 December 2010 and 9 March 2011 with enclosures.

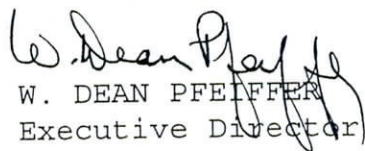
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board was unable to find any error or injustice in its previous conclusion that your "consideration by the next regular promotion board with a complete record, and status as not having failed of selection, will afford [you] adequate relief." The Board noted that under title 10, United States Code, section 628, granting SSB consideration to an officer who has been considered and not selected by a regular promotion board is discretionary. The Board recognized that the FY 1997 promotion board precept included language designed to enhance the competitiveness of minority members, such as yourself, while the precept for the FY 2002 promotion board, the first to consider you after your record had been corrected, did not; and that the overall in-zone selection rate for the FY 1997 board was 72.2 percent, while that for the FY 2002 board was 69 percent, somewhat lower. However, the Board particularly noted that your fitness report record before the FY 2002 board, convened on 9 January 2001, included years more evaluation of your performance than did the FY 1997 board, convened on 2 April 1996, a factor very much to your advantage. Although neither the FY 2002 nor 2003 regular promotion board selected you after your record had been corrected, the Board still felt your consideration by the regular promotion board with a corrected record provided you a fair and equitable remedy for the injustice it had found in your case. The Board was unable to find you would have been promoted to lieutenant colonel, absent your having been selected by any board for promotion to that grade.

In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an

official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,


W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:

