



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

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HD:hd
Docket No. 09741-10
21 October 2010

[REDACTED]

[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 promotion to lieutenant junior grade (pay grade O-2) with a date of rank and effective date of 6 June 2007 and promotion to lieutenant (pay grade O-3) with a date of rank and effective date of 6 June 2009 (as a matter of information, your due course lieutenant date of rank, with a 6 June 2007 lieutenant junior grade date of rank, would be 1 July 2009).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 October 2010. 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 and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command (NPC) dated 27 September 2010, a copy of which is attached.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The Board found no error or injustice in your not having been credited, for purposes of seniority

and promotion, with the time you served at the Uniformed Services University of the Health Sciences (USUHS). In this regard, the Board did not adopt the position taken by the Air Force Board for Correction of Military Records (AFBCMR), docket number 96-01097, which accepted the conclusion of the Office of the Staff Judge Advocate that title 10, United States Code, Section 2126 "exclusions do not preclude use of the USUHS time for date of rank and promotion eligibility purposes." The Board noted that Secretary of the Navy Instruction (SECNAVINST) 1421.4D, which the applicant in the AFBCMR case cited, was canceled by SECNAVINST 1421.6L, dated 9 December 2005, which does not apply to USUHS officers as SECNAVINST 1421.4D did. The Board likewise did not adopt the position taken by the Army Board for Correction of Military Records (ABCMR), docket number AR20090011111, noting that the ABCMR acknowledged "the applicant is not entitled to service credit for the time he spent in the USUHS Program." The Board also noted that title 10, United States Code, section 2114(b) provides that USUHS officers "shall serve...in pay grade O-1." Finally, the Board observed that under both the Naval Military Personnel Manual, article 1131-010, paragraph 2.d and Department of Defense (DoD) Directive 1312.3, paragraph 4, entry grade credit (EGC) for prior commissioned service is permitted, but not required. The DoD Directive, paragraph 4.1, mandates that service credit be "equitably determined." The Board was unable to find it inequitable that you were not granted EGC for your service in a program you did not complete, in which you received education and pay.

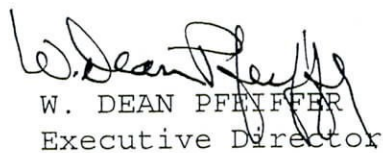
You may request that NPC take whatever steps are needed to ensure that your record reflects your promotion to lieutenant junior grade with a date of rank and effective date of 6 June 2009.

In view of the above, your application has been denied. 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

Enclosure

Copy to:
Mr. Eric S. Montalvo