



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

22

JSR
Docket No: 9823-10
31 March 2011

[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 completely removing the fitness reports for 1 October 2008 to 10 March 2009, 11 March to 15 July 2009 and 1 August to 30 September 2009.

It is noted that the Commandant of the Marine Corps (CMC) has directed removing the contested reports for 11 March to 15 July 2009 and 1 August to 30 September 2009; and modifying the report for 1 October 2008 to 10 March 2009 by removing the mark in section A, item 6.c ("Disciplinary Action") and removing, from the third sighting officer's comments, "SNM [Subject named Marine] has been the subject of numerous Human Factor Boards and Stan [standardization] Boards; all recommendations from these working groups have been consistent with the recommendations submitted by the RS [reporting senior] and RO [reviewing officer] of SNM."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 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. In addition, the Board considered the

reports of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 23 August 2010 and 17 March 2011, and the PERB memorandum dated 14 September 2010, copies of which are attached, and your letters dated 5 October 2010 with Tabs 1-14 and 30 March 2011.

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 warranting removal of the remaining contested report for 1 October 2008 to 10 March 2009, as modified. In this connection, the Board substantially concurred with the comments contained in the reports of the PERB.

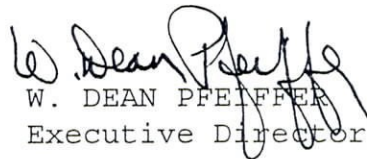
While the Board did not condone the late submission of the remaining contested report, it was unable to find this invalidated it. The Board was unable to find that documentation of your formal counseling by the staff noncommissioned officer in charge was forwarded to your reporting senior, which would have violated NAVMC 2795, paragraph 3005.1.i. Finally, the Board noted that the service record page 11 counseling entry dated 30 December 2008, which is mentioned in the remaining contested report, does appear in your Official Military Personnel File (Service - Contract Folder, image 75). The Board further noted that your other case, docket number 726-11, in which you request removing that entry, has not yet been decided. If that relief is granted, you may request reconsideration of your application to remove the remaining contested fitness report.

In view of the above, your application for relief beyond that effected by CMC 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