



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

2/8/13

HD
Docket No: NR413-13
17 October 2013

[REDACTED]

Dear [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 that your discharge of 10 August 2009 be voided; that you be awarded constructive service credit from 11 August 2009 to the date you would have attained 20 years of active duty service; that all "red flag" actions be removed; that you be considered by a special selection board (SSB) for advancement to pay grade E-7; and that all records reflecting the substantiation of the sexual assault allegation against you be removed.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 October 2013. 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 dated 10 April 2013, a copy of which is attached. The Board also considered your counsel's letter dated 10 September 2013 with enclosures.

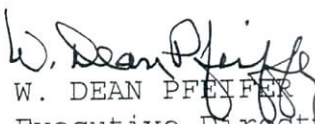
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

The Board found that the Case Review Committee (CRC) reports dated 24 December 2008 and 21 May 2009 were in substantial compliance with OPNAVINST (Chief of Naval Operations Instruction) 1752.2B. In this regard, the Board noted that paragraph 4 of each report specified the information that was considered by the CRC. The Board found you had no basis for SSB consideration, as your record before the Fiscal Year (FY) 09 (23 June - 21 July 2008) and FY 10 (22 June - 21 July 2009) E-7 Selection Boards, by which you were considered but not selected, included no information revealing the allegation against you. Since the Board was unable to find any defect in either of your considerations for advancement, it had no grounds to set aside your discharge, the reason for which was High-Year Tenure. Finally, the Board was unable to determine what actions you characterize as "red flag," so it could not consider their removal.

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 PFENFER
Executive Director

Enclosure

Copy to:
