



## **DEPARTMENT OF THE NAVY**

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

SMC

Docket No: 05577-00

8 March 2001





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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 March 2001. 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 advisory opinion furnished by the Navy Personnel Command dated 22 November 2000, 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 was unable to find that when you completed your DD Form 398-2 ("National Agency Questionnaire") in connection with your application for enlistment in the Naval Reserve, you simply forgot to mention three prior arrests listed on your original application for enlistment. They found it was your failure to disclose these arrests that was of primary concern to your reporting senior, rather than the status of your security clearance. Therefore, they concluded that any error she might have made as to the reason the Naval Inventory Control Point questioned your clearance, or as to whether the nature of the action by the Naval and Marine Corps Reserve Center Harrisburg was to revoke your clearance, or administratively withdraw it, would not be material. Concerning the incident with a civilian on a drill weekend, you concede that you did "get into an off base traffic dispute with a civilian," and you describe it as an "altercation." The reporting senior merely states you were "accused of [emphasis added] abusing the authority of [your] uniform" during this

incident, without asserting that this accusation was valid. While the reporting senior's endorsement on your rebuttal to the contested report does mention that "Disturbing facts were also revealed at [your] civilian employment," this was not cited in the basic report. The Board was not persuaded that this was a factor in the reporting senior's appraisal of your performance as a Naval Reservist. Further, you have not shown the reporting senior was incorrect in stating that numerous interviews "revealed a tendency [on your part] to be hot tempered and argumentative." The Board was unable to find the reporting senior gave you an adverse report because you declined to extend your enlistment, thereby precluding administrative separation proceedings against you. Finally, you did not convince the Board that the recommendation against your reenlistment, reflected on your "Record of Discharge from the U. S. Naval Reserve (Inactive)," was not justified.

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



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## **DEPARTMENT OF THE NAVY**

NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

> 1610 PERS-311 22 November 2000

## MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: EX-DI

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

- 1. Enclosure (1) is returned. The member requests the removal of his performance valuation for the period 16 March 1997 to 5 October 1997.
- 2. Based on our review of the material provided, we find the following:
- a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member's statement and reporting senior's endorsement are properly reflected in his digitized record.
- b. The performance evaluation in question is a Detachment of Individual/Regular report. The member alleges the comments are erroneous and unjust.
- c. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, he must provide evidence to support the claim. I do not believe EX-Petty that the reporting senior. Nothing provided in the petition shows that the report lacked rational support.
- d. A performance evaluation is unique to the period being evaluated. The reporting senior is charged with commenting on the performance or characteristics of a member under his/her command and determines what material will be included in a performance evaluation. The evaluation of a subordinate's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior. The reporting senior clearly

explains in the comment section of the performance evaluation as well as her endorsement to the member's statement, her reasons for writing the performance evaluation as she did.

- e. The fact that the performance evaluations for the two previous periods from the same reporting senior were excellent reports has no bearing on the performance evaluation in question. A performance evaluation does not have to be consistent with previous of subsequent reports. Each performance evaluation represents the judgment of the reporting senior during a particular reporting period.
- f. We have taken into consideration the statement of support enclosed with the member's petition. While the comments add insight and reflect favorably on the member, it does not show the performance evaluation was in error.
  - g. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

Evaluation Branch

Head, Performance