



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

HD:hd
Docket No: 03134-02
27 January 2003

LT [REDACTED] IC USN RET
[REDACTED]
[REDACTED]

Dear Lieutenant [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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 January 2003. 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 20 May 2002, a copy of which is attached. The Board also considered your counsel's letter dated 3 January 2003.

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. They were unable to find that your purchase of videotapes depicting child pornography was only because you were attracted to the Asian body type. In this regard, they noted that you have undergone counseling and psychological analysis for several years. They found it unlikely you would have obtained such treatment, had you merely been attracted to the Asian body type. 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



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1920
Ser 834D/1078
20 May 02

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

Via: Assistant for BCNR Matters, PERS-OOZCB

Subj: FORMER MBR [REDACTED]

Ref: (a) BCNR memo 5420 Pers-OOZCB of 03 May 02
(b) SECNAVINST 1920.6B

Encl: (1) BCNR Case File #03134-02-00 w/ Service Record
(2) CHNAVPERS ltr 1920 Ser 834D/897 of 22 Jun 99

1. Reference (a) requested comments and recommendations regarding former LCDR [REDACTED] request for restoration of his retirement rank to O-4 and adjustment of his retirement pay. Former LCDR [REDACTED] hereafter be referred to as "petitioner."

2. The petitioner has requested BCNR action based on the claim that the demotion was "without merit and even if with merit any such character liabilities have been corrected through therapy and an aggressive self-analysis with several years of psychoanalysis." Neither of these two claims forms a valid basis for granting the petitioner's request.

a. The claim that that the demotion is without merit is specious. First, he was not demoted but rather retired in the next inferior paygrade. Second, the retirement was the direct result of the respondent's own voluntary request for retirement in the next inferior paygrade in lieu of administrative separation processing. The basis for this action was the respondent's General Court-Martial conviction on 7 Jan 97 for violations of the UCMJ, Article 133 (two specifications), conduct unbecoming an officer; and Article 134 (five specifications) importation of child pornography. He was sentenced to a fine of \$4,000.00 and a dismissal from Naval Service; however, the dismissal was remitted by the Secretary of the Navy.

b. The assertion that his "character liabilities have been corrected through therapy and an aggressive self-analysis with several years of psychoanalysis" is moot. He was not retired in reduced paygrade because he had character flaws, but rather because the separation authority determined that his service in paygrade O-4 was not satisfactory. The highest paygrade in which

Subj: FORMER MBR [REDACTED]

he satisfactorily served was O-3. As this fact will never change, he will never meet the eligibility criteria for retirement in a paygrade higher than O-3.

3. The action requested by the petitioner should be denied because these issues were considered by the Assistant Secretary of the Navy when his retirement was approved in reference (b).

4. PERS-834 Point of Contact is [REDACTED]

[REDACTED]

Head, Officer Performance and Separations Branch



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

3124-02
IN REPLY REFER TO

1920

Ser 834D/897

22 Jun 99

From: Chief of Naval Personnel
To: Secretary of the Navy

Subj: LCDR [REDACTED] NC, USN, [REDACTED]

Ref: (a) COMNAVFORJAPAN GCM Order 14-96 of 21 Apr 97
(b) OJAG Supplementary GCM Order 3-99 of 19 Feb 99
(c) UCMJ 71(c)
(d) CHNAVPERS ltr 1920 Ser 834D/560 of 8 Apr 99

Encl: (1) Ltr [REDACTED] of 23 Apr 99 w/ends

1. Synopsis. Lieutenant Commander [REDACTED] an active, Regular, Nurse Corps officer with 15 years, 9 months commissioned service and 20 years, 9 months total service. Lieutenant Commander [REDACTED] has submitted a request to be retired in the next inferior pay grade of O-3 in lieu of a Board of Inquiry.

2. Discussion

a. Reference (a) reported Lieutenant Commander [REDACTED] is convicted at General Court-Martial on 7 January 1997 for violations of the UCMJ, Article 133 (two specifications), conduct unbecoming an officer; and Article 134 (five specifications), importation of child pornography. Specifically, Lieutenant Commander [REDACTED] purchased magazines and videotapes on diverse occasions that knowingly contained child pornography. Lieutenant Commander [REDACTED] sentenced to a fine of \$4,000.00 and a dismissal. Reference (b) reported the Secretary of the Navy remitted the dismissal on 8 February 1999 and that all action was final in Lieutenant Commander [REDACTED] case per reference (c).

b. Reference (d) notified Lieutenant Commander [REDACTED] the initiation of administrative show cause proceedings. By enclosure (1), Lieutenant Commander [REDACTED] submitted a request to be retired in the next inferior pay grade of O-3 in lieu of further show cause proceedings.

3. Recommendation. Retire Lieutenant Commander [REDACTED] in the next inferior pay grade of O-3. As Lieutenant Commander [REDACTED] is not indebted to the U.S. Government, recoupment is not an issue.

Subj: LCDR [REDACTED]

Your approval of this letter will affect the recommended action.
The separation code will be SNC (unacceptable conduct).

[REDACTED]

Rear Admiral, U.S. Navy
Deputy Chief of Naval Personnel

JUL 21 1999

~~Approved/Disapproved~~

Carolyn H. Becraft

CAROLYN H. BECRAFT
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)