



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

HD:hd  
Docket No: 05844-00  
13 April 2001

CWO3 J. [REDACTED] USN RET  
[REDACTED]  
[REDACTED]

Dear Chief Warrant Officer [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.

Your request for removal of your personal statement on entry into the Navy was not considered, as this request was considered previously and denied on 16 September 1983; and you have provided no new and material evidence or other matter not previously considered.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 April 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 9 January 2001, a copy of which is attached. The Board also considered your letter dated 29 March 2001.

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 advisory opinion in finding that no correction of your fitness report record was warranted. Accordingly, 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

1610  
PERS-311  
9 January 2001

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

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

Subj: CWO3 [REDACTED], USN (RET) [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of the following fitness reports and his statement to the record:

20 December 1997 to 31 March 1998  
1 April 1998 to 31 March 1999  
1 April 1999 to 2 July 1999

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters revealed the reports in question to be on file. They are signed by the member acknowledging the contents of each and his right to submit a statement. The member indicated he did desire to submit a statement. The member's statement to the record concerning all three fitness reports is properly reflected in his digitized record with the reporting senior's endorsement.

b. The member alleges the fitness reports were poorly written, inaccurate, unjust and wrong, he had no inputs to any of the reports, and he was never counseled.

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/she must provide evidence to support the claim. I do not believe Chief Warrant Officer [REDACTED] has done so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that [REDACTED] acted for illegal or improper purposes or that the reports lacked rational support.

d. The fitness reports appear to be procedurally correct. The reporting senior may properly comment or assign grades based on performance of duty or events that occurred during the reporting period. The evaluation of a subordinate's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior. Chief Warrant Officer [redacted] appears to base his request on his personal perception of his performance during the periods in question.

e. Reference (a), Annex S, paragraph S-3 states; "A member has the right to submit fitness report input, and has the duty to do so if requested by the rater or reporting senior." How or in whatever manner the fitness report is developed represents the judgment and appraisal authority of the reporting senior. The reporting senior is the sole judge of which items to use in the report.

f. Counseling of an individual takes many forms. Whether or not Chief Warrant Officer [redacted] given written, verbal, or a Letter of Instruction (LOI) does not invalidate the fitness reports.

g. The member does not prove the report to be unjust or in error.

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

[Redacted signature]

Head, Performance  
Evaluation Branch