



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

HD:hd
Docket No: 07776-02
29 July 2003

MM2 SS [REDACTED] USN
[REDACTED]
[REDACTED]
[REDACTED]
[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, in effect, removal of the enlisted performance evaluation report for 28 December 2000 to 13 June 2001; advancement to pay grade E-6 effective 16 June 2001; correction of your record to reflect you reenlisted in pay grade E-6; and corresponding adjustment of your pay, including your selective reenlistment bonus.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 July 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 opinions furnished by the Navy Personnel Command dated 10 February and 3 March 2003, the Deputy Assistant Secretary of the Navy (Personnel Programs) letter dated 21 June 2002, Subject: Complaint of Wrongs under Article 138, UCMJ (Uniform Code of Military Justice), and the memorandum for the record dated 23 July 2003, copies of which are attached. The Board also considered your counsel's letter dated 19 June 2003 with attachments.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice. In this connection, the Board substantially concurred with the advisory opinions. The Board was not persuaded that you should have been tried by a court-martial for the alleged misconduct cited in the contested performance evaluation report, nor could it find you did not commit such misconduct. Since the Board was unable to find your recommendation for advancement was improperly withdrawn, it had no basis to advance you to pay grade E-6 or show you reenlisted in pay grade E-6. 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.

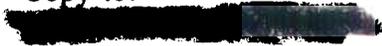
It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in 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

Enclosures

Copy to:





DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
10 February 2003

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

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

Subj: [REDACTED] S1 [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 28 December 2000 to 13 June 2001.

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 indicated he did desire to make a statement, however, PERS-311 has not received the member statement and reporting senior's endorsement. The member provided a copy of his statement with is petition, but it is not suitable for filing as the reporting senior's endorsement is missing.

b. The report in question is a Special/Regular report. The member alleges the report was issued as punishment vice exhibiting performance problems.

c. The member filed an Article 138, Complaint of Wrongs to support his contentions. Commander Navy Recruiting Command determined the requested relief requested was not appropriate in this case and denied the member's redress.

d. The member quotes from reference (a) why a special report should not be submitted, however, reference (a) further states "Submit a Special report if needed for an enlisted advancement cycle to: recommend a member for advancement who is not already in a recommended status; withdraw an advancement recommendation; or if a performance mark is needed to establish a PMA when no report which can be used for this purpose has been submitted in current rate".

e. The grades, comments, and promotion recommendation reflect the reporting senior's perception of each subordinate's performance and may be influenced by incidents that occurred

during the period of the report. The reporting senior stated his reason for submitting the report and also commented on the member's performance.

- f. The member does not prove the report to be unjust or in error.
3. We recommend the member's record remain unchanged.



Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1430
Ser 811/117
3 Mar 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1430.16E

Encl: (1) BCNR file #07776-02

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.
2. Petty Officer [REDACTED] as requested removal of his performance evaluation for the period of 28 December 2000 to 13 June 2001 and reinstatement of his advancement to MM1.
3. Based on the comments contained in pPERS-311 memorandum of 10 February 2003, the evaluation in question is valid and a favorable endorsement cannot be granted regarding this petition.

[REDACTED]

By direction

7776-02



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20380-1000

JUN 21 2002

From: Deputy Assistant Secretary of the Navy (Personnel Programs)

To: [REDACTED] USN

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UCMJ

Ref: (a) JAGMAN Chapter III
(b) COMNAVCUITCOM ltr 5800 Ser 00J/01513 of 18 Dec 01

1. This letter responds to your complaint of wrongs under Article 138, Uniform Code of Military Justice, against Commanding Officer, Naval Recruiting District Houston.

2. The general court-martial convening authority, Commander, Navy Recruiting Command, concluded your complaints are without merit under reference (a). I have determined that the action of the general court-martial convening authority, as communicated to you by reference (b), is correct, and I approve it.

3. This decision constitutes final action on your complaint. You may petition the Board for Correction of Naval Records to remove or correct any error or [REDACTED] to exist in your Naval records.

[REDACTED]

Copy to:
COMNAVCUITCOM MILLINGTON TN

23 July 2003

MEMO FOR RECORD

Re: Case [REDACTED] USI [REDACTED]

PERS-811 [REDACTED] that [REDACTED] recommendation for advancement to MM1 not been withdrawn, he would have been advanced with an effective date of 16 Jun 01 and a time in rate date of 1 Jan 01.

[REDACTED]

Head, Performance Section