



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

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HD:hd
Docket No: 08091-02
22 April 2003

LCDR [REDACTED] ISC USN
[REDACTED]
[REDACTED]

Dear Command [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 17 April 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 22 February 2003, a copy of which is attached. The Board also considered your letter dated 1 April 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.

The Board noted that the contested fitness report refers to a letter of instruction, but does not mention a nonpunitive letter of admonition, reprimand, caution or censure. Therefore, the Board found that the report at issue did not violate the prohibition against mentioning such a nonpunitive letter in a fitness report. The Board was unable to find the investigation cited in the report was a preliminary inquiry, as you allege. Even if you are correct that the investigation was a preliminary inquiry, subsection 0204.b of Judge Advocate General Instruction 5800.7C does not prohibit basing the content of a fitness report on the results of a preliminary inquiry, but merely states such an inquiry is "not intended to develop facts extensively or to serve as a medium for analyzing facts." Finally, the Board found you were afforded the due process to which you were entitled, in that you were afforded an opportunity to submit a statement concerning the contested fitness report.

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

8091-02



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

1610
PERS-311
22 February 2003

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

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

Subj: LGE [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 February 2002 to 1 July 2002 and all associated statements and addendum's.

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 submit a statement, however, PERS-311 has not received the member's statement and reporting senior's endorsement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending of the report to submit a statement.

b. The fitness report in question is a Detachment of Individual/Regular report. The member alleges the mention of a non-punitive administrative letter he received in a fitness report violates navy regulations. The member did not provide a copy of the non-punitive letter/letter of instruction.

c. It is the reporting senior's responsibility to determine what will be included in a fitness report. The fitness report represents the judgment and appraisal authority of the reporting senior. Reference (a), Annex N, paragraph N-13 states; "Comments may be included on misconduct whenever the facts are clearly established to the reporting senior's satisfaction". "The comments may refer to non-punitive administrative corrective measures, other than a nonpunitive letter of censure". The reporting senior clearly explains in the comment section his reason for preparing the report as he did.

d. Counseling of a member takes many forms. Whether or not the member was given oral or written counseling or issued a Letter of Instruction (LOI) does not invalidate a fitness report. The reporting senior states the member was issued a Letter of Instruction.

e. 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