



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

HD:hd
Docket No: 08232-00
8 February 2002

L- [REDACTED] MSC USNR
[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.

You requested removal of your fitness reports from Naval Hospital Newport, Rhode Island for 2 February 1995 to 31 January 1996, 1 February 1996 to 31 January 1997 and 1 February to 17 June 1997. You also requested removal of your failures by the Fiscal Year (FY) 00 and 01 Staff Lieutenant Commander Selection Boards. You impliedly requested that your discharge from the Regular Navy on 1 March 2001 be set aside. Finally, you asked that you be allowed to remain on active duty for three years beyond your separation date of 1 March 2001, until you became retirement eligible, if your failures of selection are not removed.

Your request to be retained on active duty beyond your 1 March 2001 separation date, notwithstanding your failures of selection, was not considered, as you are currently on active duty as a member of the Naval Reserve.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 February 2002. 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 3 and 28 March 2001, copies of which are 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.

The Board substantially concurred with the advisory opinion dated 3 March 2001 in concluding that the contested fitness reports should stand. In this connection, they were unable to find your director for administration influenced your reporting senior against you. They were likewise unable to find she did not provide you proper performance counseling, or that she told you, as you assert she did, that you "would be promoted" with fitness reports reflecting a promotion recommendation mark of "promotable" (third best).

The Board concluded that removing your failures of selection by the FY 00 and 01 Staff Lieutenant Commander Selection Boards was not warranted. Since they found insufficient basis to remove any of the contested fitness reports, they found your promotion boards properly considered them. Further, if you are correct that each of your promotion boards included a member who was aware of your "predicament" at Newport, this would not establish that you were denied fair consideration for promotion.

As the Board found insufficient basis to remove either of your failures of selection to lieutenant commander, they had no grounds to set aside your discharge from the Regular Navy.

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



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

4232-00

1610
PERS-311
3 March 2001

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

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

Subj: LT [REDACTED] SN, [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:

- 2 February 1995 to 31 January 1996
- 1 February 1996 to 31 January 1997
- 1 February 1997 to 17 June 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 reports in question to be on file. They are signed by the member acknowledging the contents of each report and his right to submit a statement. The member's statement and reporting senior's endorsement to his fitness report for the period 2 February 1995 to 31 January 1996 is filed in his record. The member did not desire to submit a statement to the remaining fitness reports in question.

b. The member alleges he was selected politically for failure by the hospital chain of command for failure. We have reviewed all the reports in question and they are procedurally correct.

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 must show that either there is no rational support for the reporting senior's action or that the reporting senior acted for 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 Lieutenant [REDACTED] has done so. The fitness report represents the opinions of the reporting senior. Nothing provided in the member's petition shows the reporting senior acted for illegal or improper purpose or that the reports lacked rational support.

d. In developing a fitness report, the reporting senior may, at his/her discretion obtain information from the Executive Officer, the Department Head, or the member. In whatever manner the report is developed represents the judgment and appraisal authority of the reporting senior.

e. The member does not prove the reports to be unjust or in error.

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



Head, Performance
Evaluation Branch



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

5420
Pers 85
28 Mar 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] USN, [REDACTED]

Ref: (a) Pers-311 memo of 3 Mar 01
(b) SECNAVINST 1401.1B

Encl: (1) BCNR File

1. Enclosure (1) is returned concurring with the findings of ref (a) and recommending disapproval of [REDACTED] BCNR request.

2. Per ref (a), [REDACTED] does not prove the three fitness reports dated 2 Feb 95 -31 Jan 96, 1 Feb 96 - 31 Jan 97 and 1 Feb 97 - 17 Jun 97 to be unjust or in error, therefore, not presenting a reason for their removal from his permanent record. As there is no evidence of administrative or material error in the member's record, per ref (b), a special promotion selection board is not warranted.

3. [REDACTED] record before the FY-00 and FY-01 boards was considered complete and provided a substantially accurate and fair portrayal of the member's naval career. The removal of LT [REDACTED] failure of selection for the FY-00 or FY-01 Active Duty Lieutenant Commander Staff Promotion Selection Boards is not warranted. Recommend disapproval of [REDACTED] request for a special promotion selection board.

[REDACTED]

BCNR Liaison, Officer Promotions
And Enlisted Advancements Division