



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: 01562-03
8 September 2003

[REDACTED]

Dear [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 5 September 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 23 June 2003, a copy of which is attached. The Board also considered your letter dated 21 August 2003 with enclosures.

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, except the statement, in paragraph 2.c, that the applicant "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 statement, in paragraph 2.d, that the request for your detachment for cause (DFC) was "disapproved" by the Commander, [REDACTED] and the statement, in paragraph 2.e, to the effect that your promotion recommendation in the contested fitness report is considered adverse. The Board recognized that under its governing regulation, Secretary of the Navy Instruction 5420.193, enclosure (1), paragraph 3.e(2), the applicant's burden of proof is merely to persuade the Board that the evidence of record demonstrates "the existence of probable material error or injustice." The Board noted that the Commander, [REDACTED] recommended disapproving your DFC, while the Chief of Naval Personnel was the sole authority for its disapproval.

The Board further noted that the promotion recommendation in the contested report, "Progressing," is not adverse per criteria specified in Bureau of Naval Personnel Instruction 1610.10.

The Board found that part of the reason for disapproving your DFC was the determination that you had not been given reasonable time to improve and correct perceived deficiencies. However, the Board found this did not preclude the reporting senior from documenting such deficiencies. The Board further found that another part of the reason for disapproving your DFC was insufficient documentation that the perceived deficiencies had been communicated to you. On the other hand, the Board was unable to find you were not counseled at all, noting you concede you received a letter of instruction. In this regard, the Board generally does not grant relief on the basis of an alleged absence of counseling, as counseling takes many forms, so the recipient may not recognize it as such when it is provided. The Board was unable to find the reporting senior omitted reference to any accomplishments that should have been mentioned expressly. Finally, the Board was unable to find that the aviation certification inspection the reporting senior said you failed to prepare your department to undergo occurred, as you assert, in November 1999, before the reporting period.

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

1610
PERS-311
23 June 2003

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

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

Subj: [REDACTED] JR., [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 2000 to 31 January 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 submit a statement, however, PERS-311 has not received the member's statement and reporting senior's endorsement.

b. The report in question is a Periodic/Regular report. The member alleges the reporting senior's comments and grades are disingenuous, libelous, unsubstantiated, manifestly unjust, and are an abuse of discretion in the proper use of fitness reports.

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 must provide evidence to support the claim. I do not believe Lieutenant [REDACTED] has done so.

d. Lieutenant Commander [REDACTED] asserts that the fitness report should be removed because the request for Detachment of Cause (DFC) was disapproved by Commander, [REDACTED] on 12 February 2001 and by the Chief of Naval Personnel on 22 March 2001. The DFC was initially disapproved because there was insufficient documentation indicating the deficiencies were communicated to the member or that he was afforded a reasonable period of time to improve and to correct the deficiencies.

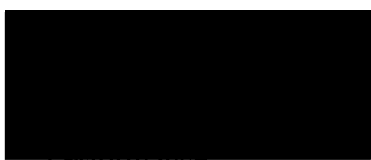
e. The reporting senior states the report did not meet the criteria as an adverse report, however, due to the comments in block-41 and the member's promotion recommendation the report is considered adverse. Even though the report was not referred to the member as adverse and for a statement, we will not remove the report. The member signed the report on 8 January 2001 and indicated he did desire to submit a statement.

f. The reporting senior may comment or assign grades based on performance of duty or events that occurred during the period of the report. The report represents the judgment of the reporting senior. [REDACTED] bases his request on his personal perception of his performance during the period. Complaints of wrongful treatment should be handled under one of the processes set up for that purpose, Article 138, Navy Hotline, etc.

g. The member has provided considerable supporting documentation that reflects favorably on the member performance, it does not invalidate the fitness report.

h. 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