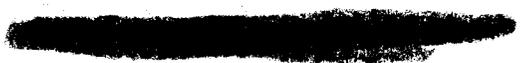




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No. 08049-08
30 October 2008

AN



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 removing the fitness report for 16 September 2007 to 12 May 2008.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 October 2008. 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 (PERS-311) dated 30 September 2008, with e-mail regarding PERS-311 contact with the reporting senior, a copy of which is attached. The Board also considered your letter dated 27 October 2008.

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 recommendation to remove reference to the revocation of your end of tour award. The Board considered Bureau of Naval Personnel Instruction 1610.10A, enclosure (2), paragraph 13-13i to be inapplicable, as the contested fitness report does not indicate the award was only recommended when it was revoked. Your unsubstantiated assertion that you were exonerated of all

charges concerning a civil matter did not persuade the Board that you did not engage in "poor personal behavior," the reason given for the revocation of your award and your chief warrant officer application. Finally, the Board noted that you have made a statement for the record in reply to the fitness report at issue. 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
30 September 2008

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

Via: PERS/BCNR Coordinator (PERS-31C)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10A (EVALMAN)

Encl: (1) BCNR File 08049-08 wo/Service record

1. Enclosure (1) is returned. The member does not make a specific request for the removal or correction of his fitness report for the period of 16 September 2007 to 12 May 2008.

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. The fitness report was examined for accuracy and compliance with reference (a) and found not signed by the member; however, the report was accurately annotated "Certified Copy Provided" in the member's signature block by the reporting senior and placed in the member's OMPF. The member's statement and the reporting senior's endorsement to the fitness report are present in the member's file.

b. The report in question is a Detachment of Individual/Regular report ending 12 May 2008. The member alleges the report was written as punishment for a civil matter that he was exonerated of all charges. Additionally, the fitness report should not have mentioned an award that he did not receive.

c. The fitness report is technically a valid report.

d. At the time of the examination, the report was processed without interpreting the comments in block 41, "Comments on Performance", in violation of reference (a). The report was accepted and sent to the member's OMPF. Per reference (a), Chapter 13, page 13-9, subparagraph 13-13 (i), the reporting senior should not have commented on an award not received by the member. The reporting senior commented in block 41, Comments on Performance: "Displayed poor judgment while off-duty that was inconsistent with Navy core values and the rank of a Senior Chief Petty officer in the U.S. Navy. As a result his Chief Warrant officer application and his end of tour award were both revoked due to his poor personal behavior during the latter part of

[REDACTED]

this evaluation period.” Per reference (a), Chapter 13, page 13-3, subparagraph 13-8 and page 13-7, subparagraph 13-12 (a), the fitness report could also have been considered an adverse report and should have been referred to the member for signature.

e. Pers-311 has contact [REDACTED] regarding the fitness reports in question to request he reconsider and revise the report in member’s file. Additionally, [REDACTED] interpretation of reference (a) is that the report should not be considered adverse. He stated the comments were used to justify the decline in performance traits and promotion recommendation. The overall purpose and applicability of any instruction are foundational elements of the interpretation of its contents ha [REDACTED] considered the report adverse he should have referred the report to the member for statement, to notify him that his performance report contains an adverse matter. Per Reference, (a) member’s signature is required on all adverse fitness reports unless other wise specified in Chapter 14. [REDACTED] is currently on temporary duty assignment and said he would supplement the fitness report to remove the comments on the award not received by the member.

f. As PERS-311 cannot interpret the reporting senior’s intentions in preparing the fitness report on the member. We recommend in block 41, Comments on Performance, of “As a result his Chief Warrant officer application and his end of tour award were both revoked due to his poor personal behavior during the latter part of this evaluation period.” be amended to remove “and his end of tour award were both”.

g. If the member believed the reporting senior prepared the report for reprisal or in retaliation he could have filed a complaint of wrongful treatment under one of the processes set up for that purpose, e.g. Article 138, Navy Hotline, etc.

h. The member does partially prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged except as stated above.


JOHN I. FRANTZ
By Direction