



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

212

HD:hd
Docket No. 01127-08
22 September 2008

[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.


A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 September 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 dated 10 March 2008, a copy of which is 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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, 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
10 March 2008

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

Via: PERS/BCNR Coordinator (PERS-3LC2)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10A EVAL Manual

Encl: (1) BCNR File 01127-08 w/Service record

1. Enclosure (1) is returned. The member requests the removal of her performance evaluation report for the period of 16 November 2005 to 15 March 2006.

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 her right to submit a statement. The member indicated on the report that she did intend to make a statement. The member's statement and the reporting senior's endorsement are not present in the file. Per reference (a), Chapter 18, the member has two years from the ending date of the report to submit a statement if she so desires.

b. The report in question is an adverse Special/Regular report. The member alleges the evaluation report should be removed due to insufficient justification of action. The member states she the offense she was charged with was dropped for insufficient evidence so there was no justification for the adverse report. Additionally, the member states she was allowed to go IA and could not have gone if there was a bad evaluation in her file.

c. The report is a valid report.

d. The report in question states in block 41, Comments on Performance, that the evaluation was submitted to withdraw her promotion recommendation to Chief Petty Officer. The reporting senior signed the evaluation report on 16 March. Reference (a), chapter 3, page 3-6, subparagraph 3-9 (2 d) – Submission or Withdrawal of Enlisted Promotion (Advancement) Recommendation or Establishment of Performance Mark Average (PMA) authorizes the submission of a Special Report to document this action taken by the reporting senior. The evaluation report was accurately prepared and submitted by the reporting senior in accordance with reference (a).

[REDACTED]

e. The fact the member was allowed to go on an Individual Augmentation tour has no bearing on the validity of the evaluation report nor do her previous evaluation reports.

f. Reference (a), Chapter 13, page 13-7; subparagraph 13-12 (a) –General Commenting on Misconduct, specifically addresses how and when a reporting senior must document details of misconduct in a member’s performance evaluation report. It allows reporting seniors to ‘include comments on misconduct whenever the facts are clearly established to the reporting senior’s satisfaction’.

g The reporting senior is charged with commenting on the performance or characteristics of each member under his/her command and determines what material will be included in a fitness report. The comments and performance trait marks assigned on a report are at the discretion of the reporting senior. The evaluation of a member’s performance and making recommendations concerning suitability for advancement and assignments are the responsibility of the reporting senior.

h. If the member believed the reporting senior prepared the reports in 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.

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

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


JOHN C. FRANTZ
By direction