



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

ELP
Docket No. 7309-98
3 September 1999



Dear 

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 1 September 1999. 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 Enlisted Performance Branch, Naval Personnel Command (Pers 832), dated 6 July 1999, a copy of which is enclosed.

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. The Board noted that the Military Personnel Manual article on the detachment for cause (DFC) of certain enlisted personnel specifically states that a DFC request with endorsements thereon, if approved by the Chief of Naval Personnel, will be filed in the official record of the member concerned. Further, the request for DFC will be referred to the individual concerned for an opportunity to submit a written statement. Whether or not an individual submits a statement concerning the matter, he will be directed to signify in writing that he has read the request for DFC, does or does not desire to make a statement, and he is aware that an approved DFC will become a part of his official record. The DFC was referred to you on 23 September 1996. That letter listed two nonjudicial punishments (NJP) and two letters of instruction. The record reflects that you signed a statement that you understood the recommended DFC and that if approved, the

DFC documentation would be filed in your record. Your contention that all of the investigatory and internal correspondence regarding the NJPs should not be filed on your microfiche record is without merit. Since that documentation was an integral part of the evidence supporting the commanding officer's DFC request, the Board concluded that it was properly filed in accordance with the governing directives. The Chief of Naval Personnel, specifically Pers-83, is the filing authority for DFC packages and this Board did not find it appropriate to usurp that authority. Since you have been treated no differently than others who have been similarly detached, the Board finds no basis for removing the NJP documentation contained in the DFC package from the record. 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
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5420
PERS-832C
6 Jul 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

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


Subj: 

Ref: (a) BUPERS WASHINGTON DC//PERS 83// 100936Z JAN 97

Encl: (1) BCNR File 07309-98
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material.

2. The review indicates that the petitioner was Detached for Cause (DFC) as authorized by reference (a). It has been a long-standing BUPERS policy to file the DFC package in its entirety. Documentation supporting that significant event should remain in the record. The maintenance of those documents is essential to depict the petitioner's character and background, and in conjunction with any other unsatisfactory conduct, to serve as a possible consideration for future administrative action. A presumption of regularity attaches to official records, and the burden of proof is on the petitioner to show documentary evidence that an error has occurred or an injustice suffered. It is noted that there is no NAVPERS 1070/607 (Court Memorandum) to document an NJP on 17 Aug 96. Therefore, favorable action on this petition is not recommended.


Technical Advisor To The
Head, Enlisted Performance
Branch (PERS-832)