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

HD:hd
Docket No: 01501-01
23 October 2001

CDE [REDACTED] AGC USNR
[REDACTED]
[REDACTED]

Dear Commander [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 the fitness report for 1 January 1985 to 28 February 1986. You further requested that the following documents be filed in your record: your statement of 15 March 2001 to the fitness report for 1 October 1998 to 31 May 1999 and the reporting senior's endorsement of 17 March 2001, the fitness report for 10 to 14 July 2000, and the fitness report for 1 January to 30 September 2000. Finally, you requested removal of your failures by the Fiscal Year (FY) 01 and 02 Naval Reserve Judge Advocate General Corps Captain Selection Boards.

The Navy Personnel Command (NPC) has placed in your record all the documents you wanted to be filed.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 October 2001. 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 NPC, dated 16 May and 18 June 2001, and a memorandum for the record dated 17 October 2001, copies of which are attached. The Board also considered your letter dated 14 August 2001 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.

The Board substantially concurred with the advisory opinion dated 16 May 2001 in finding that the contested fitness report should stand. Your rebuttal of 27 February 1986, without the reporting senior's endorsement, did not persuade the Board that you were unfairly evaluated. They found the marks assigned were not adverse. While they recognized that some of the comments could be considered adverse, they noted that you were apprised of the report and given a chance to make a statement. Finally, they were unable to find you were not counseled on your performance. In this connection, 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 found your failures of selection for promotion should stand as well. Concerning both of the selection boards in question, they found that the contested fitness report was properly considered; that your rebuttal to that report was properly not filed in your record without the reporting senior's endorsement; and that you could have provided your rebuttal by means of communication with the selection boards.

Specifically concerning the FY 01 selection board, they found that none of the items whose filing you requested should have been available for consideration, as they all postdated the 19 April 2000 adjournment date.

Specifically regarding the FY 02 selection board, they found that the fitness report for 1 January to 30 September 2000 was filed on 23 March 2001, before the selection board convened on 2 April 2001. They did find that the report for 10 to 14 July 2000 was not filed until 9 July 2001, after the selection board had adjourned on 4 April 2001. However, they found this "not observed" report, covering a five-day assignment which was favorably noted in the report for 1 January to 30 September 2000, would not have appreciably enhanced your competitiveness for promotion. Further, they noted that you should have spotted the error which initially caused the report to be unacceptable for file, the absence of dates from blocks 14 and 15 (period of report). Finally, they observed that you could have provided the report by means of communication with the selection board, had you checked your record and discovered it had not yet been filed. In light of the memorandum for the record, the Board found that your statement of 15 March 2001 to the fitness report for 1 October 1998 to 31 May 1999 and the reporting senior's endorsement of 17 March 2001 were not filed until 25 June 2001, after the selection board had adjourned. However, they found these documents would not have appreciably enhanced your competitiveness for promotion, as they effected no change to the marks reflected in the pertinent fitness report. Further, they noted that you could have provided these documents by means of communication with the selection board, had you checked your record and discovered they had not yet been filed.

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

1501-01

1611

PERS-311

16 May 2001

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

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

Subj: CDR [REDACTED], USNR [REDACTED]

Ref: (a) BUPERSINST 1611.1 (REPORT ON THE FITNESS OF OFFICERS)

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 January 1985 to 28 February 1986 and to file the member's statement and reporting senior's endorsement to his fitness report for the period 1 October 1998 to 31 May 1999.

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 member did not sign the report; however, block-82 is annotated with "Copy Provided". The member provided a copy of a statement with his petition dated 27 February 1986 to Commander, Naval Military Personnel Command. Per reference (a), the member's statement was not suitable for filing, as it was not endorsed by the reporting senior. The member's statement and reporting senior's endorsement to his fitness report for the period 1 October 1998 to 31 May 1999 is properly reflected in his digitized record.

b. The report in question is a Detachment of Officer/Regular report. The member alleges the report is adverse and the unjust grades and evaluation was the direct result of his efforts to perform the duties of 2 or 3 lawyers with severe manpower and equipment shortages.

c. The report is not adverse as the member states. The reporting senior is charged with commenting on the performance or characteristics of an officer under his/her command and determines what material will be included in the report. The report in question comments on the member's performance and specific accomplishments. Nothing provided in the petition demonstrates that the reporting senior acted improperly, violated requirements, or that he abused his discretionary authority in evaluating the member's performance. The report is procedurally correct.

d. The fitness report has been in Command [REDACTED] record for fifteen years and he has been promoted twice with the report in his record. He has provided no explanation for failing to make additional efforts to correct what the member perceives as an adverse fitness report.

e. It is clear that the sole reason for the petition is the member's failure of selection. The fact that the member perceives the fitness report to be career damaging, is not sufficient reason for removal of a fitness report.

f. The member does not prove the report to be unjust or in error.

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

[REDACTED]

Head, Performance
Evaluation Branch

17 October 2001

MEMO FOR RECORD

Re: Case # [REDACTED] JAGC, USNR, do [REDACTED]

On this date, PERS-313 [REDACTED] advised that [REDACTED] tmt of 15 Mar 01 to his fitness rept for 1 Oct 98 to 31 May 99 and the rep sr's endorsement of 17 Mar 01 were filed in his naval record on 25 Jun 01.

[REDACTED]
[REDACTED]

Head, Performance Section