



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

HD:hd
Docket No: 02984-01
14 November 2001

LCDE [REDACTED] NC 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 November 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 the Navy Personnel Command dated 11 and 23 August 2001, copies of which are attached. The Board also considered your memorandum dated 2 October 2001.

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 advisory opinion dated 11 August 2001 in finding that the contested fitness reports should stand. They were unable to find that you had a personality conflict with Captain L---, but they noted it is a subordinate's obligation to get along with superiors. They were likewise unable to find the reporting senior, a different officer, did not take due account of your diagnosed depression, of which you say your doctor advised Captain L---. Since they found no defect in your performance record, they had no grounds to remove your failures by the Fiscal Year (FY) 00 Active Nurse Corps Commander Selection Board or the FY 02 Naval Reserve Nurse Corps Commander Selection Board, set aside the result of the FY 00 Nurse Corps lieutenant commander continuation board, grant you a special selection board, or set aside your discharge from the Regular Navy on 1 January 2000. They also noted that the contested fitness report for 1 November 1998 to 10 July 1999, signed by the reporting senior on 30 July 1999, was not available to the FY 00 Active Nurse Corps Commander Selection Board, which met from 12 to 15 April 1999 (this report probably was available to the FY 00

continuation board, which met from 23 to 25 August 1999). 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

Copy to:
Ms. Mary T. Hall



2984-01

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
11 August 2001

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

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

Subj: LCDR ~~████████████████████~~ PERSON, USN ~~████████████████████~~

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness reports for the period 1 November 1997 to 31 October 1998 and 1 November 1998 to 10 July 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 reports in question to be on file. Both reports are signed by the member acknowledging the contents of each and his right to submit a statement. The member indicated he did desire to submit a statement for the report for the period 1 November 1997 to 31 October 1998, however, PERS-311 has not received the member's statement and the reporting senior's endorsement. The member did not desire to submit a statement for the report ending 10 July 1999.

b. The fitness report for the period 1 November 1997 to 31 October 1998 is a Periodic/Regular report. The report for the period 1 November 1998 to 10 July 1999 is a Detachment of Individual/Regular report. The member alleges the reports are erroneous and unjust.

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 Commande ~~████████████████████~~ has done so.

d. The reporting senior is charged with commenting on the performance or characteristics of all members's under his/her command and determines what material will be included in a fitness report. It is appropriate for the reporting senior to obtain and consider information from an

officer's immediate supervisor in developing a fitness report. However the report is developed, it represents the judgment and appraisal authority of the reporting senior.

e. Although the member signed the reports and knew the performance trait marks and comments on performance he has provided nothing other than his own perception of his performance. The petitioner could have requested mast in accordance with article 1151, U. S. Navy Regulations, or submitted a Redress of Wrong Committed by a Superior, or an Article 138, Complaint of Wrongs.

f. A fitness report does not have to be consistent with previous or subsequent reports. In this case, the reporting senior clearly explains her reason for preparing the reports as she did.

g. Counseling of an officer takes many forms. Whether the member was given oral or written counseling or a Letter of Instruction (LOI) does not invalidate the fitness reports.

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



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2984-01

5420
PERS-85
23 Aug 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: BUPERS/BCNR Coordinator

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT COMMANDER [REDACTED]

Encl: (1) BCNR File 02984-01

1. We are returning enclosure (1) with the following observations and the recommendation that Lieutenant Commander [REDACTED] request be disapproved.
2. Based on the recommendation of PERS-311 Lieutenant Commander [REDACTED] petition for removal of his fitness reports for the periods ending 31 October 1998 and 10 July 1999 be denied, there is no substantive change to his record. Therefore, PERS-85 and PERS-86 are in agreement that the correct information was available and used by the selection and continuation board of FY-00. Consequently, there is no basis for a special selection board.
3. Lieutenant Commander [REDACTED] can be justifiably proud of his outstanding record and noteworthy contributions. The negative response to his petition does not detract from his honorable service to this nation and the United States Navy.

[REDACTED]
BCNR Liaison, Officer Promotions
and Enlisted Advancement Division