



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

HD:hd
Docket No: 03070-01
6 December 2001

22

M [REDACTED]

Dear [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 6 December 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 9 August and 13 September 2001, copies of which are attached. The Board also considered your letter dated 15 November 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 was unable to find you, rather than your peer, deserved to have been marked "Early Promote." In this regard, they particularly noted that you provided nothing to verify your assertions as to what the reporting senior told you about why he had marked you as he did. They further noted that you provided no statements from knowledgeable individuals indicating how they felt you compared with your peer. 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

1610

PERS-00H/245

9 Aug 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

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

Ref: (a) BCNR PERS-00ZCB memo of 22 May 01
(b) OPNAVINST 5354.1E Navy EO Manual

Encl: (1) BCNR File 03070-01

1. Reference (a) requested an advisory opinion in response to Lieutenant Commander [REDACTED] request to delete from her record the fitness report from 12 October 1999 to 30 September 2000 and have it replaced with a fitness report signed by a different reporting senior. Enclosure (1) is returned.

2. While Lieutenant Commander [REDACTED] states that her reporting senior's evaluation of her performance during that reporting period was "unjust, inaccurate, arbitrary and/or capricious," she does not specifically mention that gender/racial discrimination was the root cause of the problem. Lieutenant Commander does indicate that the Lieutenant Commander who received the "Early Promote" is male, that the reporting senior is male, that she was the only female in the unit and that she was twice assigned to the administrative officer position. However, while she alludes to an opinion that she does not believe the "early promote" officer earned that designation as much as she did, she stops short of indicating the decision was made specifically along gender lines.

3. That is not to say, of course, that discrimination did not occur. If, in fact, the statements from the reporting senior are true, that "There is absolutely nothing you could have done [to get the early promote]" and "if Mike screws up there is a chance you could move up..." there does appear to be some "predetermined" ranking. In addition, there appears to be a discrepancy between the ranking (of "Must Promote") and the written portion of the which states, "Lieutenant Commander [REDACTED] has my strongest possible recommendation for early promotion to Commander." However, without additional supporting material or the results of an investigation into this

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

matter, Lieutenant Commander [REDACTED] request for removal of
her fitness report can not be endorsed and therefore it is
recommended the fitness report be retained in her service record
as they are written.

[REDACTED]

Director, Navy
Equal Opportunity Division
(PERS-00H)



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

1610
PERS-311
13 September 2001

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

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

Subj: LCDR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her fitness report for the period 12 October 1999 to 30 September 2000 and replace it with a fitness report signed by a different reporting senior.

2. Based on our review of the material provided, we find the following:

a. A review of the member 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 she did desire to submit a statement, however, PERS-311 has not received the member's statement and reporting senior's endorsement. Per reference (a), Annex S, paragraph S-8, the member has two years from the report ending date to submit a statement.

b. The report in question is a Periodic/Regular report. The member alleges her fitness report was unjust, inaccurate, arbitrary, and capricious. The member requests that her original fitness report for the period in question is removed and replaced with a report that more accurately reflects her performance.

c. The report appears to be procedurally correct. The reporting senior is the judge of the performance of subordinates. While the member may disagree with the reporting senior's evaluation, it all comes down to the requirement that the reporting senior must make a judgment and rank the officers. In this case the reporting senior assigned the member a promotion recommendation of "Must Promote" vice "Early Promote". Such a ranking does not indicate a failing on Lieutenant Commander [REDACTED], but rather the reporting senior determined another member in the summary group was more qualified for promotion. The reporting senior clearly explained his reason for assigning the member's promotion recommendation in block-41, Comments on Performance.

d. The member specifically requests a new fitness report be prepared and signed by a different reporting senior. This action is strictly prohibited. Reference (a), Annex B, paragraph B-2 states the qualifications of a reporting senior. Paragraph B-9, outlines the procedure for the Assumption of Reporting Senior Authority by the Immediate Superior in Command (ISIC) if he/she felt the reporting senior's capacity to submit an impartial report was impaired. The ISIC did not do so. Reference (a), Annex S, paragraph S-11 outlines the member's right to appeal other than just petition the Board for Correction of Naval Records (BCNR).

e. 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