



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

BJG
Docket No: 7506-99
14 June 2000

LT [REDACTED] JR USNR
[REDACTED]
[REDACTED]

Dear Lieuten[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. Your request to remove your Surface Warfare Officer (SWO) Qualification non-attainment letter dated 15 February 1997 was not considered, as it is not in your record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 June 2000. 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 27 March and 17 April 2000, copies of which are attached. They also considered your counsel's letter dated 31 May 2000 with enclosure.

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 dated 27 March 2000.

The Board found that your reporting senior's (RS's) adverse endorsement dated 20 February 1997 on your rebuttal to your contested fitness report should have been referred to you promptly. However, they were unable to find that your ability to respond was harmed, noting that you submitted a seven-page rebuttal dated 20 February 1998 (enclosure 5 to your application). While your RS's mid-term counseling document dated 12 July 1996 (enclosure 11 to your application) indicated no problems of the kind reflected in your contested fitness report and the endorsement on your rebuttal, they were unable to find that your RS did not apprise you of perceived deficiencies. In this regard, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many

forms, so the recipient may not recognize it as such when it is provided. The fact that your RS ordered you to get a mental health evaluation, then rescinded the order after you objected, did not convince them that your RS could not fairly assess your performance. The underway watch bills you provided (enclosure 10 to your application) established that your RS's endorsement was incorrect in indicating your removal from the Officer of the Deck (OOD) Under Instruction watch station occurred before July 1996, however, they did not consider this a material matter warranting corrective action. They were not persuaded that your RS's endorsement was incorrect in describing your role of Combat Information Center Watch Officer as "limited," or in stating that the OOD supervised you when you served in this capacity, noting that supervision need not involve direct contact. They found your previous more favorable fitness reports and the Navy and Marine Corps Achievement Medal for January to July 1996 did not invalidate your contested fitness report. Finally, they were not persuaded that your RS wrongfully prevented your final qualifications as OOD and SWO.

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:
Greg D. McCormack, Esq.



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

1610
PERS-311
27 March 2000

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

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

Subj: L [REDACTED] USN [REDACTED]

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 report for the period 1 March 1996 to 31 January 1997, and Surface Warfare (SWO) Qualification Non-Attainment Letter.

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

a. A review of the member's headquarters record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member's statement and endorsement is properly reflected in his record.

b. Lieutenant [REDACTED] requests the removal of his fitness report because it was not a proper assessment of the performance of his duties. 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 [REDACTED] has done so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

c. 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 a fitness report. The fitness report represents the judgment and appraisal authority of the reporting senior. In the comment section of the fitness report, the reporting senior clearly states his reason for the grades assigned.

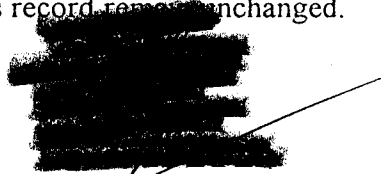
d. Counseling of an officer takes many forms. Whether or not Lieutenant [REDACTED] is given written counseling or a Letter of Instruction (LOI) does not invalidate the fitness report. The reporting senior did indicate counseling did occur.

e. We cannot comment on why the reporting senior did not provide the member with a copy of his endorsement to the member's statement concerning his fitness report.

f. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period.

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

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

A large, solid black rectangular redaction covers the signature of the official.

Head, Performance
Evaluation Branch



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

1610
Ser PERS41/ 71
17 Apr 00

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

Via: BCNR Coordinator (PERS-00ZCB)

Subj: LT [REDACTED] R., USNR [REDACTED]

Ref: (a) PERS-00ZCB memo 5420 of 4 Apr 00
(b) PERS-311 memo 1610 of 27 Mar 00

Encl: (1) BCNR File

1. Enclosure (1) is returned with the following information provided. Reference (a) requested PERS-41 comments on LT [REDACTED] request to remove his original fitness report for the period 1 March 1996 to 31 January 1997, and Surface Warfare Officer Qualification Non-Attainment Letter from his permanent service record.

2. After careful review of enclosure (1), concur with the conclusions contained in reference (b), that the fitness report in question should remain unchanged and part of [REDACTED] record. Further support the Commanding Officer's prerogative to withhold Surface Warfare Officer Qualification from any officer who has not gained full trust and confidence to stand watch as Officer of the Deck Underway.

3. Recommend the member's record remain unchanged.

[REDACTED]

Director, Surface Officer
Distribution Division (PERS-41)