



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

JJA

BJG
Docket No: 4131-01
8 February 2002

MR [REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. [REDACTED]

This is in reference to your application dated 15 May 2001, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You added a new request, to remove your performance evaluation report for 1 March to 1 November 1994, and you again requested that your reenlistment code of RE-4 (not eligible for reenlistment without prior approval of the Chief of Naval Personnel) be upgraded. You now specifically requested that the code be changed to RE-3 (eligible for reenlistment except for disqualifying factor). In your previous case, docket number 8126-98, your request to change your reenlistment code was denied on 24 February 1999.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 7 February 2002. 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 current application, together with all material submitted in support thereof, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 22 October 2001, a copy of which is attached.

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 in concluding that the contested evaluation should stand. As they found no defect in your performance record, they had no grounds to change your reenlistment code. In view of the above, the Board again voted to deny relief. 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
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1616
PERS-311
22 October 2001

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

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

Subj: EX-AM [REDACTED] ISNR [REDACTED]

Ref: (a) BUPERSINST 1616.9A

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 1 March 1994 to 1 November 1994.

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

a. A review of the member's headquarters revealed the member was a SA (E-2) at the time of the report. Petty Officer Third Class and below performance evaluations are not held in the member's headquarters record, only in the field service record. We base our opinion on an uncertified copy of the performance evaluation provided with the member's petition.

b. The report in question is a Transfer/Regular report. The member alleges he was unaware of the report and was not given a chance to submit a rebuttal or contest the evaluation. Also he states there were no grounds to justify the adverse evaluation.

c. The reporting senior is charged with commenting on the performance or characteristics of each member under his command and determines what material will be included in a performance evaluation. The contents and grades assigned on a report are at the discretion of the reporting senior. In the comment section of the evaluation, the reporting senior clearly states his reason for preparing the report as he did.

d. The report in question is not signed by the member. Reference (a) requires all adverse evaluations be signed by the member and the member be afforded the right to submit a statement. The member provided a copy of a letter dated 25 November 1994, which notified the member of the adverse evaluation. The member also provided a copy of a letter that forwarded the report to his next command for signature. Although the report is not signed by the member, he was notified of the report and had an opportunity to submit a statement.

e. The performance evaluation has been in the member's record for over six years. If the member felt the report was in error or unjust, timely submission of corrections was in order.

f. 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