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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: 04896-03
24 October 2003



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.

You requested, in effect, removal of the nonjudicial punishment (NJP) of 5 November 1994, removal of your failures of selection by the Fiscal Year 97 and 98 Active Line Lieutenant Commander Selection Boards, cancellation of your discharge from the Regular Navy on 1 May 1998, and retroactive restoration to active duty.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 October 2003. 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 opinion furnished by the Navy Personnel Command dated 15 August 2003, a copy of which is attached. The Board also considered your undated letter received on 7 October 2003.

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.

The Board was unable to find the contested NJP was unsupported by facts. The Board found that since you were attached to or embarked on a Navy vessel (the [REDACTED]), you had no right to demand a trial by court-martial. In his endorsement on your appeal of the NJP, the Commanding Officer, [REDACTED] stated he disapproved your request for a court-martial because he felt your offenses were appropriately handled at NJP. The Board was unable to find your case should have been

referred to a court-martial. Since the Board found insufficient grounds to remove the NJP, and it found the report of your board of inquiry was properly not included in your record, it had no grounds to remove your active duty failures of selection to lieutenant commander, set aside your discharge from the Regular Navy, or restore you to active duty.

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 FFERFER
Executive Director

Handwritten signature in black ink, overlapping the typed name.

Enclosure



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

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5420
Ser 80/
15 Aug 03

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

Via: Assistant for BCNR Matters, PERS-OOZCB

Subj: [REDACTED]

Ref: (a) MCM, Part V
(b) SECNAVINST 5212.5D

Encl: (1) BCNR memo 5420 PERS-OOZCB of 25 Jun 03

1. We are returning enclosure (1) with the following observation and the recommendation that former [REDACTED] petition be denied. The following information is provided concerning [REDACTED]'s non-judicial punishment (NJP) and Board of Inquiry (BOI).

a. On 5 November 1994, [REDACTED] received NJP, in accordance with reference (a), for violation of the UCMJ, Article 134, Fraternization with Subordinates (four specifications), and Article 107, False Official Statement. The Commanding Officer, [REDACTED] (CVN 69) found that over a 6-month period SNO wrongfully fraternized with several female subordinates and falsified an official statement certifying that a female petty officer passed an oral board when she did not. [REDACTED] recommended that [REDACTED] show cause for retention.

b. The applicable procedure for objecting to an adverse finding at [REDACTED] is to formally appeal the determination to the NJP Authority's immediate superior in command (ISIC). The ISIC is vested with the authority to set aside findings of guilt and/or punishment imposed. In [REDACTED]'s case, his CO imposed NJP after finding that [REDACTED] fraternized with enlisted personnel and falsified an official statement. [REDACTED] appealed the findings and his punishment as unjust. Commander, [REDACTED] reviewed and denied his appeal. The report of NJP, to include the punitive letter of reprimand, was made part of [REDACTED] permanent officer record.

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Subj: [REDACTED]

2. Findings from NJP and BOI hearings are separate and distinct processes--not intended to bind or over-turn one another. The purpose of NJP is to provide commanders with the means to punish minor disciplinary infractions and preserve good order and discipline within their units. BOIs are non-punitive hearings, convened to review an officer's fitness for further naval service. The Board is neither bound by the results of Captain's Mast, nor empowered to review as to whether the finding at Mast was just or the punishment imposed proportionate to the offense committed. If a BOI does not find misconduct, it does not invalidate the findings from [REDACTED] [REDACTED] nor can it require that an NJP be removed from an officer's official record.

4. The findings of the POI in [REDACTED]'s case are not available for review as the records were retained and destroyed in accordance with reference (b). Based on historical procedure we can hypothesize that the BOI findings were not adverse. At the time of his BOI, it was customary to only file BOI findings in an officer's record if the findings included a recommendation to discharge the officer. Otherwise, the findings were retained and destroyed per reference (b). [REDACTED] could have exercised his privilege to request the BOI findings be filed in his record or to provide a copy of said findings to the presidents of the selection boards which considered his record. The BOI findings not being included in his official record did not make his record incorrect, nor did it disadvantage him during the selection boards. Therefore, [REDACTED]'s assertion that his BOI "dismissed all charges and corrected his record" is inaccurate as it was not within their authority.

5. Based on the aforementioned facts, [REDACTED] petition is without merit.

[REDACTED]
Director, Active and Reserve
Officer Career
Progression Division