



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

Docket No: 3299-16  
OCT 12 2016

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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits.

Regarding your request for a personal appearance, Board regulations state that personal appearances before the Board are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 September 2016. The names and votes of the members of the panel will be furnished upon request. 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 (AO), furnished by the Navy Personnel Command (NPC) PERS-32, dated 16 August 2016, a copy of which was previously provided to you, and your response to the NPC advisory opinion dated 16 September 2016.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, the Board substantially concurred with the comments contained in the NPC advisory opinion, and found the report to be valid. While you did provide compelling arguments for your position, as explained below, those arguments failed to overcome the burden of proof necessary to change or remove the Fitness Report. The government is entitled in these matters to a presumption of regularity. Simply put, absent concrete and compelling evidence to the contrary, it is presumed that rules, instructions, and laws were properly followed, and that actions taken were proper.

Your Reporting Senior (RS) provided explicate language in the fitness report, explaining that the change in promotion recommendation was not an adverse comment upon your performance, but was due to the rise in performance of one of the peers in your summary group. Navy directives state that detaching RS's are required to submit detaching fitness report. A RS is allowed to enter "Certified Copy Provided" in the member signature block, when the report is not adverse and a signature cannot be obtained. The report does not contain any adverse information as defined by BUPERSINST 1610.10C, and comments and performance trait marks assigned are at the discretion of the RS. Concerning your contention that your fitness report is an unfair characterization of your performance because it is based on personal animus between you and your Commanding Officer (CO) due to your pregnancy, the Board while sympathetic to your arguments, did not feel the burden was met. A CO is afforded wide latitude in her ranking of the officers under her command, and while popular opinion on the ship or within the unit may feel one way, ultimately the decisions as to scores and ranking fall upon the CO. The letters and documentation you provided established that you enjoyed a particularly stellar reputation among your peers and the senior enlisted on your ship, however, that alone does not overcome the presumption of regularity as it pertains to your fitness report or supplant the judgment of the CO in making her rating decisions.

After closely considering your case and the evidence submitted, the Board after carefully considering your arguments, reluctantly concluded that the record did not support a finding that your RS acted illegally, for improper purposes or that the report lacked rational support. The report was administratively and procedurally correct as written and filed. Accordingly your application has been denied.

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 within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in your case. 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,



Executive Director