



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 08707-98

30 June 1999

[REDACTED]

[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 30 June 1999. 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 April 1999, a copy of which is attached. Finally, they considered the Commander, Naval Air Reserve Force letter to the Secretary of the Navy (Assistant Secretary of the Navy (Manpower and Reserve Affairs)) (ASN (M&RA)) dated 25 February 1997 and the ASN (M&RA) letter to you dated 20 March 1997.

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 view of the above, 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

Enclosure



8707-98

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

1610
NPC-311
15 APR 99

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

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: [REDACTED]

Ref: (a) BUPERINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his fitness report for the period 1 October 1995 to 10 March 1996.

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

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire to submit a statement. A statement has not been received by NPC-311 from the member. Per reference (a), the member has two years from the ending date of the report to submit a statement if desired.

b. The member feels that the fitness report in question was submitted due to repercussions of an Article 138 submitted against the Commanding Officer of HCS-5.

c. The report in question is a "Special" report prepared per reference (a), Annex D, paragraphs D-9.d and D-9.e. We feel the member's allegation stated in paragraph 2.b has no merit. The member submitted the Article 138 on 24 April 1996, which was after the date of the report in question. Therefore, at the time the fitness report was signed by the reporting senior, the reporting senior had no way of knowing that the member would later submit an Article 138.

d. Based on the findings of the Article 138, the member had been counseled by numerous individuals at HCS-5, including the CO, XO, CMC, AMO, and the MSCPO about his declining performance. Despite the written counseling warning given on 21 December 1995,

Subj: [REDACTED]

and numerous verbal counseling, AMSC Nally continued to be a disruptive and uncooperative member of the command.

e. The report represents the judgment and appraisal responsibility of the reporting senior for a specific period of time. It is not required to be consistent with previous or subsequent reports.

f. The marks, comments and recommendation are at the discretion of the reporting senior, and are not routinely open to challenge.

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

3. We recommend retention of the report in question. We also recommend HCS-5 forward AMSC Nalley's statement of rebuttal, dated 1 April 1996, to NPC-311 for inclusion in the member's digitized record, as directed by the Article 138.

[REDACTED]

Head, Performance
Evaluation Branch