



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

HD:hd  
Docket No: 06046-98  
13 April 1999

LT [REDACTED] MC USN  
[REDACTED]  
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, 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 8 April 1999 and completed its deliberations on 9 April 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 16 February 1999, a copy of which is attached. The Board also considered your letters dated 29 March 1999 with enclosure and 9 April 1999.

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.

The Board would have directed the amendment of the contested fitness report recommended by the advisory opinion but for your letter of 9 April 1999, which indicated you would not consider such an amendment to be remedial.

The Board fully concurred with the advisory opinion in concluding that the report at issue should not be removed. Although the reporting senior cited no specific instances of deficient performance, they found the narrative, without the portion whose removal was recommended by the advisory opinion, properly satisfied the requirement to explain the adverse mark of "1.0" in block 38 ("leadership"). They found the reporting senior properly mentioned matters that occurred before the reporting period in order to explain the adverse mark he was currently assigning you. They duly considered the letters from the reporting senior and commanding general (enclosures (13) and (14) to your application), but they recognized that

both were addressed to your physical evaluation board to support a finding that you were fit for duty. In finding that the reporting senior's letter to your physical evaluation board did not contradict the contested fitness report, they noted that he expressly acknowledged, in the report, that the "problem" he cited "has not prevented [you] from continuing to carry out [your] routine medical duties at an area clinic in a fine manner." The recommendation, in the report of investigation dated 28 February 1996 (enclosure (10) to your application), that your reporting senior be relieved as Group Surgeon "due to a demonstrated lack of military leadership" did not persuade the Board that he could not render a valid fitness report on you.

Concerning the reporting senior's comment that "[you were] not selected for a Navy residency," the Board did not agree with your contention that this comment was misleading, nor did they agree with your argument that it amounted to a prohibited reference to a medical condition. Finally, they found this comment did not violate the prohibition of Bureau of Naval Personnel Instruction 1610.10, enclosure (2), Annex N, paragraph N-14b against comment on "Previous Failure of Selection." In this regard, they concluded that this prohibition applied only to comment on a previous failure of selection for promotion.

The Board was not convinced that the contested fitness report penalized you for having voluntarily sought professional help with your medical problem. They were likewise not persuaded that the report was some kind of retribution against you for the portion of the investigation report which reflected unfavorably on the reporting senior.

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

Enclosure

6046-98



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

1610  
NPC-311  
16 February 1999

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

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

Subj: LT [REDACTED], USN, MC [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 31 January 1996 to 26 July 1996.

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

a. A review of the member's headquarters record revealed the 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 fitness report is an adverse report, however, the member indicated in block-46 he did not desire to submit a statement.

b. Lieutenant [REDACTED] alleges the grade he received in block-38 was based exclusively on a medical condition and not on the actual performance of his duties or leadership abilities. The rationale for the petition is that the report should be removed because comments in block-38 of the report are prohibited by reference (a). While the fitness report instruction indicates that comments on medical conditions are prohibited, it also states that exceptions may be made where necessary to clarify other information in the report.

c. A fitness report does not have to be consistent with previous or subsequent reports. It represents the judgment and appraisal responsibility of the reporting senior during a particular reporting period.

d. [REDACTED] mentions a command investigation that was completed on 28 February 1996. The completed investigation was forwarded with recommendations concerning the reporting senior to Commanding General, I Marine Expeditionary Forces, however the final results of the investigation is not included in the member's petition. The fitness report was signed 5 months after the investigation was completed.

e. [REDACTED]s provided two letters of support in his petition. While their comments add insight and reflect favorably on the member, these individuals were not responsible for evaluating the member's performance.

3. We recommend retention of the report with the following portions of the last bullet be deleted from the fitness report:

“and is currently being evaluated by a Medical Board. He is under treatment and counseling for this problem and is on medication for depression. This is unfortunate, but has not prevented him from continuing to carry out his routine medical duties at an area clinic in a fine manner”.

[REDACTED]

Head, Performance  
Evaluation Branch