



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

HD:hd
Docket No: 00163-99
27 October 1999

[REDACTED]

Dear Comm: [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 21 October 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 26 April 1999, a copy of which is attached. The Board considered your letter dated 15 June 1999 with enclosures.

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 that the contested fitness report was incorrect in stating you had "multiple verbal counseling sessions." While the captain who submitted the statement at enclosure (1) to your letter of 15 June 1999 did not consider such discussions to be counseling sessions, the Board found no requirement for more formal counseling. They noted the reporting senior stated that you did not have mid-term counseling because you were on leave from 14 to 25 April 1997 and on temporary additional duty from 28 April to 20 June 1997 (Bureau of Naval Personnel Instruction 1610.10, enclosure (2), paragraph C-5 provides that April, not March as you state, is the month active lieutenant commanders are to receive mid-term counseling). Finally, the Board found your more favorable fitness report for the preceding period, from a different reporting senior, did not invalidate the report at issue.

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

163-99



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

1610
NPC-311
26 April 1999

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

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

Subj: LCDR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her fitness report for the period 1 August 1996 to 30 June 1997.

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

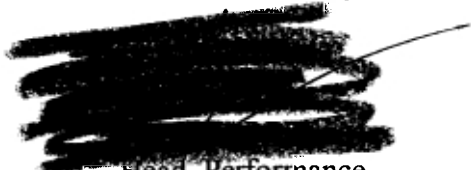
a. A review of the member's headquarters record revealed the report in question to be on file. The member signed the report, acknowledging the contents and her right to submit a statement. The member indicated in block-46 that she desired to submit a statement. To date, Navy Personnel Command (NPC) has not received the member's statement. In accordance with reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the fitness report to submit a statement if desired.

b. The petitioner indicates the fitness report should be removed because the report is unjust and does not reflect a fair assessment of her performance, lacks constancy, and that counseling was never provided. In reviewing petitions, which question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he/she must provide evidence to support the claim. I do not believe that LCDR [REDACTED] done so. The fitness report represents the opinions of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

c. Whether the member was counseled or not does not invalidate the fitness report. The reporting senior clearly states in the comment on performance section that multiple counseling did occur and her justification for the performance traits.

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

3. We recommend the member's record remain unchanged.



Head, Performance
Evaluation Branch