



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

BJG  
Docket No: 658-01  
27 June 2001

*Handwritten mark*

HM [REDACTED] USN

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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 June 2001. 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 opinions furnished by the Navy Personnel Command dated 3 and 26 April 2001, copies of which are attached.

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 opinions. Accordingly, 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

Enclosures



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

1610  
PERS-311  
3 April 2001

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

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 June 2000 to 31 July 2000.

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

a. A review of the member's headquarters record revealed the member was a HN (E-3) at the time of the report. Petty Officer Third Class and below performance evaluations are not held in the member's headquarters record, only in the field service record. We base our opinion on an uncertified copy of the performance evaluation provided with the member's petition.

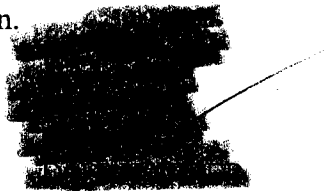
b. The performance evaluation in question is a Special/Regular report. The member states because of an Administrative Board held on 24 October 2000 found the member did not commit misconduct and recommended retention. The member did not provide a copy of the Administrative Board proceedings.

c. The Administrative Board indicates the member did not commit misconduct, he did receive NJP. Although the charges were dismissed, the reporting senior may comment or assign performance trait marks based on performance of duty or events that occurred during the reporting period.

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

3. We recommend the member's record remain unchanged. We also recommend the member's petition be forwarded to the Enlisted Performance Branch (PERS-832) for comments. If PERS-

832 find the member's petition has merit, we have no objection to the removal of the performance evaluation in question.



Head, Performance  
Evaluation Branch



**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND**

**5720 INTEGRITY DRIVE**

**MILLINGTON TN 38055-0000**

5420  
PERS-832C  
26 Apr 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS (BCNR)

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED], USN, [REDACTED]

Encl: (1) BCNR File 00658-01  
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request to remove derogatory material, restoration of paygrade E-4, and repayment of forfeiture of pay.

2. The review reveals that petitioner did go to an administrative board that made a finding of no misconduct and recommended retention. That finding and recommendation was endorsed by this office and the petitioner was issued a "no further action" message. As a matter of policy, the administrative board case was not filed in the petitioner's official service record. There is no written requirement for a commanding officer to set aside punishment after a "no misconduct" finding by an administrative board, although many commanding officers do just that.

3. The administrative discharge process is designed to determine whether a member should be retained or separated from the Navy. As the first step in that process, the administrative discharge board must determine whether the respondent has committed the alleged misconduct. Unless the issue of guilt or innocence has been determined by a court-martial or civilian court, the board must make that initial finding. The finding is based on the evidence of record and is solely within the discretion of the board members. The finding is a matter of judgment and is not open to review or reversal, unless there has been evidence of fraud committed by the respondent during the administrative separation proceedings. The non-judicial proceeding whereby a commanding officer takes a member to Mast is a separate process. The commanding officer, by

whatever evidence is brought before him, makes an independent judgment as to whether the accused has committed the alleged misconduct. This procedure has its own avenue of appeal. In summation, NJP and administrative discharge are two completely separate processes. One should not be dependent upon the other for completeness or justice. Therefore, favorable action on this petition is not recommended.



Technical Advisor to the  
Head, Enlisted Performance  
Branch (PERS-832)