



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

HD:hd  
Docket No: 00803-00  
29 June 2001

LCDR [REDACTED] USN

Dear Commande [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.

As you have been promoted to lieutenant commander effective 1 October 2000, your request for a special selection board for the Fiscal Year (FY) 99 Line Lieutenant Commander Selection Board was not considered.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 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 2 May and 1 June 2000, copies of which are attached. The Board also considered your letter dated 5 June 2001 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.

The Board substantially concurred with the advisory opinion dated 2 May 2000 in finding that the contested fitness reports should stand. In this regard, they found that the report for 28 October 1994 to 31 January 1995 was entirely outstanding, although you assert that Commander D--, the ship's weapons officer, mistreated you throughout your tenure aboard the ship. Regarding the report for 1 February 1995 to 31 January 1996, they noted that in block 43 ("Promotion Recommendation - Summary") the reporting senior assigned the maximum number of "Early Promote" and "Must Promote" marks (three and four, respectively) allowed by Bureau of Naval Personnel Instruction 1610.10, enclosure (2),

Annex A, for a peer group of 14 lieutenants. While they recognized your assertion of mistreatment by the weapons officer might well be correct, they were unable to find that the contested reports, submitted by the commanding officer, were unfair or inaccurate; they were not persuaded that your treatment by the weapons officer impaired your performance.

Since the Board found no defect in your performance record, they had no basis to remove your failures by the FY 99 and 00 Line Lieutenant Commander Selection Boards.

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

Enclosures

00803-00



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

1610  
PERS-311  
2 May 2000

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

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

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

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness reports for the period 28 October 1994 to 29 November 1996 during his tenure aboard [REDACTED] (74).

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

a. A review of the member's headquarters record revealed three fitness reports for the period in question. All three fitness reports are signed by the member acknowledging the contents of each and his right to make a statement. The member indicated he did not desire to submit a statement.

b. The member alleges he was verbally abused, physically assaulted, constantly harassed, and fear of retribution. In reviewing petitions that 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 Lieutenant [REDACTED] done so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the reports lacked rational support. All three fitness reports appear to be procedurally correct.

c. The member further alleges that a personality conflict existed between himself and his immediate supervisor. He suggests that the reporting senior was influenced by the supervisor that resulted in an inaccurate assessment of Lieutenant [REDACTED] performance. It is appropriate for the reporting senior to obtain and consider information from an officer's immediate supervisor in

developing a fitness report. However the report is developed, it represents the judgment and appraisal authority of the reporting senior.

d. 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.

e. The member used an Article 138 Complaint of Wrongs to support his contentions, however, the member did not provide a copy of the final results with his petition.

f. Failure of selection or enhancement of promotion opportunity does not justify removal of fitness reports.

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

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

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D. [Redacted]  
Head, Performance  
Evaluation Branch



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

5420  
Pers-85  
1 Jun 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: I [REDACTED] USN [REDACTED]

Ref: (a) PERS-311 ltr 1610 of 2 May 00

Encl: (1) BCNR File

1. Enclosure (1) is returned recommending disapproval of [REDACTED] request for a special selection board.

2. Reference (a) recommends retention of the fitness reports for the period 28 October 1994 to 29 November 1996. I concur with that recommendation. Barring removal of those fitness reports no basis exists for [REDACTED] a special promotion board.

[REDACTED]

BCNR Liaison, Officer Promotions  
and Enlisted Advancements Division