

DEPARTMENT OF THE NAVY

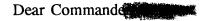
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd

Docket No: 02595-99

22 June 2001





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 7 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 undated and dated 8 January 2001, the Department of Defense Inspector General letter dated 26 April 2000, and the Naval Inspector General (NAVINSGEN) letter dated 19 July 1999, copies of which are attached. The Board also considered enclosure (1) to the NAVINSGEN letter of 19 July 1999 (NAVINSGEN Report of Investigation of 15 July 1999) and your letter dated 8 October 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 agreed with the advisory opinion dated 8 January 2001. They were unable to find that the contested fitness report was in reprisal for any protected communication you made. 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

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 PFEIF

Executive Director

Enclosures



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

1610 NPC-311

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

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

Subj: CDNL_____SNI

Ref: (a) BUPERSINST 1610.10 EVAL Manual

(b) NAVADMIN 049/97

Encl: (1) BCNR File

- 1. Enclosure (1) is returned. The member requests the removal or return of his fitness report for the period 16 February 1998 to 10 May 1998.
- 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 make a statement. The member indicated his desire to make a statement, however, the member's statement and first endorsement has not been received by NPC-311.
- b. Paragraph 4.d of reference (b) states: "prepare a Not Observed/Detachment of Individual Report with comments for every period of active duty that is greater than ten days and less than ninety days. PIMS are not required for brief service. For administrative purposes only, or for duty with the member's own reserve unit". This change eliminates the requirement for a graded Detachment of Individual Report for reservists on active duty for training.
 - c. The member partially proves the report to be unjust or in error.

3. We recommend partial approval of the member's request. We recommend the report be changed to a NOB Report, remove all grades and promotion recommendation leaving the Comments on Performance in block-41.

Head, Performance Evaluation Branch



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

> 1610 PERS-311 8 January 2001

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

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

Subj: Cushus USN

Ref: (a) Our Memo 1610 PERS-311 Undated Ref: (b) BUPERSINST 1610.10 EVAL Manual

(c) NAVADMIN 049/97

Encl: (1) BCNR File

1. Cancel reference (a).

- 2. Enclosure (1) is returned. The member requests the removal or return of his fitness report for the period 16 February 1998 to 10 May 1998.
- 3. 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 member indicated he did desire to submit a statement, however, the member's statement and the reporting senior's endorsement has not been received by PERS-311.
- b. The report in question is a Detachment of Individual/Regular report. Reference (c) states "prepare a Not Observed/Detachment of Individual report with comments for every period of active duty that is greater than ten days and less than ninety days. PIMS are not required for brief service, for administrative purposes only, or for duty with the member's own reserve unit". This change eliminates the requirement for a graded Detachment of Individual report for reservists on active duty for training. However, the intent of reference (c) was not to abrogate the reporting senior's responsibility to report sub-standard performance.
- c. The report in question is a fully graded report with comments and a promotion recommendation. The intent of the report was clearly to document the sub-standard performance of Commanded Association, are refore, the report should have been submitted as a Special report vice a Detachment of Individual report. In block-41, the reporting senior clearly justifies a Special Report.

- d. We have administratively removed the "X" from block-11 and inserted a "X" in block-13 to indicate a Special Report and we are in the process of notifying the reporting senior of our actions.
- 4. We recommend the record remain unchanged except as noted above.

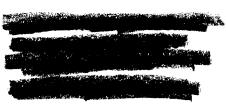
Head, Performance

Head, Performance Evaluation Branch



INSPECTOR GENERAL DEPARTMENT OF DEFENSE 400 ARMY NAVY DRIVE ARLINGTON, VIRGINIA 22202-2885

APR 2 6 2000



This is to inform you the Naval Inspector General has completed an investigation into your reprisal allegations, conducted under Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Military Whistleblower Protection Act." Specifically, you alleged that your chain of command at Task Force 67 gave you an adverse Fitness Report for the period February 16, 1998 to May 10, 1998, terminated your Presidential Selective Reserve Call-up assignment, and initiated a Security Access Eligibility Report to suspend your security clearance in reprisal for your protected communications.

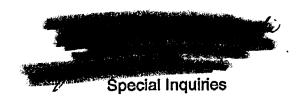
The Navy concluded that the above adverse personnel actions were not in reprisal for your protected communications. We conducted a thorough review of the Navy report of investigation and agree with its conclusion. Accordingly, we have closed your case for further consideration under 10 U.S.C. 1034.

Under 10 U.S.C. 1034 you may request the Board for Correction of Naval Records (BCNR) consider an application for correction of your military records. Enclosed is an application should you choose to have the matter considered. The BCNR address is: Board for Correction of Naval Records, 2 Navy Annex, Washington, D.C. 20370-5100. The telephone number is (703) 614-1316 or DSN 224-1316.

Enclosed is a copy of the Navy report of investigation, redacted under the guidelines of the Freedom of Information Act.

Should you have any questions, please contact
Office of Departmental Inquiries,

Sincerely,



Enclosure



DEPARTMENT OF THE NAVY NAVAL INSPECTOR GENERAL WASHINGTON NAVY YARD BUILDING 200-1 901 M STREET, S.E. WASHINGTON, D.C. 20374-5006

IN REPLY REFER TO:

981135 Ser N5/1301 19 July 1999

SENSITIVE -- HOLD CLOSE

From:

Naval Inspector General

To:

Inspector General, Department of Defense

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subj:

DOD SENIOR OFFICIAL CASE # MILITARY WHISTLEBLOWER REPRISAL

; ALLEGED

Ref:

(a) DODIG memo of 27 Oct 98 (reprisal complaint)

(b) DOD Directive 7050.6

(c) IGDG 7050.6

Encl:

(1) NAVINSGEN Report of Investigation of 15 Jul 99

(2) NAVIG-OOL Legal Review

- 1. Enclosures (1) and (2) are forwarded in response to reference (a) and in accordance with references (b) and (c).
- 2. The allegation was unsubstantiated, in that it was determined that the adverse personnel actions would have been taken in this case, even if the protected communications had not been made.
- USN, one of the responsible officials and an FY-99 O-6 selectee, is scheduled for promotion on 1 September 1999. In order that he may be promoted on time, a timely review of this case is requested.

4. Our points of contact are Director, Special Inquiries Division, at Lind.

JAGC, USN, Special Assistant for Legal Matters, at

Copy to: (w/o encls to the report)

SEČNAV CNO

SENSITIVE -- HOLD CLOSE

4.82/26

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