



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

HD:hd
Docket No: 01679-01
15 February 2002

LCDR [REDACTED] RET
[REDACTED]
[REDACTED]

Dear Commander [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 14 February 2002. 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 29 May, 6 July, and 7 and 16 August 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 advisory opinion dated 6 July 2001 in finding that the contested detachment for cause (DFC) should stand.

The Board was unable to find the Commander, Naval Reserve Readiness Command Region ONE (COMNAVRESREDCOMREG ONE) lacked adequate grounds for requesting your DFC from your duty as a commanding officer; that he sought your DFC prematurely, before he had all pertinent inspection and investigation results; that the investigations he considered were either improperly conducted or unnecessary; that he pressured the inspectors to make findings against you; that he applied an unreasonable standard in assigning you the unsatisfactory grade, on an administrative inspection, which he used as a basis for your DFC; that he did not use proper alternative options before requesting your DFC; that he violated fundamental fairness and the DFC instruction by transferring you after you were awaiting permanent change of station orders, and after two years and seven months as a commanding officer; that he made false official statements or unsubstantiated allegations against you; that he did not permit you to review the evidence against you; that he did not

permit you to defer submitting your rebuttal to the DFC request until the administrative inspection and related investigation reports had been completed; that his endorsement of your rebuttal added new and false allegations that warranted further referral to you for rebuttal; that he abused his discretion by assigning an overall unsatisfactory grade for the administrative inspection; that your DFC was too harsh a measure under the circumstances; that COMNAVRESREDCOMREG ONE was verbally abusive or intimidating to you while the DFC was pending; or that he failed to ensure you had an interview with the Commander, Naval Surface Reserve Force. The Board was likewise unable to find that the Commander, Naval Surface Reserve Force denied your right to an interview with him; that he inadequately reviewed the DFC documentation; or that he wrongfully concurred with and forwarded the DFC recommendation. They were not persuaded that the Commander, Naval Reserve Force endorsement on the DFC request should have been obtained. Finally, they were unable to find that the Chief of Naval Personnel inadequately reviewed the DFC documentation, or that he wrongfully approved the DFC recommendation. They did not consider it a material matter that the Commander, Naval Surface Reserve Force endorsement on the DFC request made no mention of your desire for an interview with him, or that the DFC correspondence did not comply with the Department of the Navy Correspondence Manual, in that it lacked the endorsement of the Commander, Naval Reserve Force, who was a via addressee on the DFC request.

Since the Board found insufficient basis to set aside the DFC, they had no grounds to remove the related fitness report.

The Board found that your failures of selection by the FY 98 through 02 Naval Reserve Line Commander Selection Boards should stand. With respect to the FY 98 and 99 failures, they found that neither the DFC nor the related fitness report was available to either of the promotion boards concerned. In this regard, they noted that the FY 99 board was in session from 11 to 28 May 1998, while the DFC was not approved until 7 August 1998, and the fitness report was not submitted until 17 September 1998. Since the Board found that the DFC and related fitness report should stand, they had no grounds to remove your failures by the FY 99 through 02 Naval Reserve Line 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



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1679-01

1610
PERS-00H/225
29 May 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED],
[REDACTED]

Ref: (a) PERS-00ZCB memo 5420 of 04 Apr 01
(b) OPNAVINST 5354.1E Navy EO Manual

Encl: (1) BCNR File 01679-01

1. Reference (a) requested an advisory opinion in response to Lieutenant Commander [REDACTED]'s request to overturn unjust, wrongful "Detached for Cause (DFC)," approved 7 August 1998. Enclosure (1) is returned.
2. Upon a thorough review of the case, I did not find any allegations of discrimination based on race, ethnicity, national origin, sex, or religion raised by Lieutenant Commander [REDACTED].
3. Based on the information provided, there are no issues of equal opportunity in question; I am providing no recommendation for the disposition of this case.
4. Additionally, Lieutenant Commander [REDACTED] requested, as a remedy if his application is approved, "an equal opportunity with my peers for promotion and related warfare career positions." I offer my support as in accordance with the definition of equal opportunity listed in reference (b) and guidance provided by selection board precepts.

[REDACTED]
Director, Navy Equal
Opportunity Office
(PERS-00H)



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1679-01

1611
PERS 834C/354
06 Jul 01

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

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

Subj: LCDR [REDACTED] USNR (TAR), [REDACTED]

Ref: (a) MILPERSMAN 1611-020

Encl: (1) BCNR File

1. Enclosure (1) is returned for your action. PERS-83 has reviewed the contents of Enclosure (1) and determined that LCDR [REDACTED]'s petition to remove a Detachment for Cause (DFC) from his record should not be granted.
2. Detachment for Cause based upon a superior's loss of confidence in an officer in command has the lowest threshold for approval. The trust between a superior and an officer in command is of the utmost importance, and as such, a detachment based on the superior's loss of confidence requires the lowest threshold of factual basis. The issue presented in this case is then whether LCDR [REDACTED] superior requesting his DFC stated any factual basis to justify his DFC. It is clear in the DFC request that there were sufficient factual bases to justify Commander, Naval Reserve Readiness Command Region ONE's actions. His DFC package included a letter of instruction, records of failed command inspections, as well as two investigations involving LCDR [REDACTED]'s command. COMNAVRESREDCOMREG ONE cited these as factual bases for the loss of confidence.
3. Reference (a) requires that a DFC of an officer in command must show "an articulated, fact-supported loss of such confidence by the immediate superior, with the concurrence of a flag officer in the chain of command..." This case met all requirements of Reference (a). Commander, Naval Surface Reserve Force positively endorsed the DFC. The administrative review by Deputy Chief of Naval Personnel included a review of the record to see if the DFC request met the threshold as outlined above. This case fell within the contemplated uses of a detachment for cause and was consistent with treatment of similar cases. In

Subj: BCNR RESPONSE TO [REDACTED] USNR (TAR),
[REDACTED]

addition, this review also ensured that [REDACTED] received due process.

4. For all the above reasons, the DFC involving [REDACTED] was proper, therefore recommend his record remain unchanged.

[REDACTED]
Director, Personnel Progression
Performance and Security Division



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
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1610
PERS-311
7 August 2001

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

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

Subj: LCDR [REDACTED] SNR (TAR) [REDACTED]

Ref: (a) BUPERS ltr 1421 PERS-834C/821 Ser 86 of 7 August 1998
(b) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member request the removal of his fitness report for the period 1 October 1997 to 18 September 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 submit a statement. The member indicated he did desire to submit a statement. PERS-311 has not received the member's statement, however, he provided a copy with his petition.

b. The fitness report in question is a Detachment of Individual/Regular report.


c. The member states the fitness report should be removed because the Detachment for Cause (DFC) lacked a factual basis and did not comply with governing directives. Per reference (a), the member's (DFC) was properly adjudicated on 7 August 1998 and that information is reflected in his official record. The fitness report appears to be procedurally correct.

d. A fitness report is unique to the period being evaluated. The reporting senior is charged with commenting on the performance or characteristics of an officer under his command and determines what material will be included in a fitness report. The contents and grades assigned on a fitness report as well as making promotion recommendations and assignments are the responsibilities of the reporting senior.

e. The member states he filed an Article 138, UCMJ-Complaint of Wrong, and Article 1150. U.S. Navy Regulations, 1990-Redress of Wrong Committed by a superior, however, the member did not provided a copy of the final action with his BCNR.

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

3. We recommend the member's record remain unchanged. If the member provides a copy of the final action on his complaints of wrong and his allegations are substantiated we will reconsider his petition


R
Performance
Evaluation Branch



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

5420
PERS-86B

16 AUG 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT COMMANDER [REDACTED]
[REDACTED]

Encl: (1) BCNR File 016679-01

1. We are returning enclosure (1) with the following observations and the recommendation that Lieutenant Commander [REDACTED] request for a removal of his failures of selection be disapproved.

2. Based on the recommendation of PERS-83 that Lieutenant Commander [REDACTED] petition for removal of his Detachment for Cause be denied, there is no substantive change to his record. Therefore, the correct information was available and used by the selection boards of FY-98, FY-99, FY-00, FY-01, and FY-02. Consequently, there is no basis for a special selection board or a removal of his failures of select.

[REDACTED]
Deputy Director, Reserve
Officer Promotions,
Appointments, and Enlisted
Advancement Division