



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

BJG
Docket No: 5799-01
22 March 2002

ETC S [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.

You requested, in effect, unspecified "reparation" of your fitness report for 7 August 1999 to 28 July 2000. At a minimum, you requested that your statement to the record and your complaint under Article 138, Uniform Code of Military Justice, be filed in your record with the contested report. Your statement of 4 August 2000 is on file in your record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 March 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 opinion furnished by the Navy Personnel Command dated 17 December 2001, a copy of which is 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 opinion, except they noted that you alleged the report at issue had been lowered from "early promote" (highest) to "promotable" (third highest); you did not allege, as the advisory opinion indicates you did, that the proper mark would have been "must promote" (second highest). They found your record was substantially complete without your complaint under Article 138. 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.

Although the Board voted not to place your Article 138 complaint in your record, you may submit it to future selection boards.

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



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

5799-01

1610
PERS-311
17 December 2001

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

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

Subj: ETC [REDACTED], U [REDACTED]

Ref: (a) COMSUBGRU TEN ltr 5819 Ser02L/518 of 29 November 2000
(b) Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs) ltr of
26 June 2001
(c) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

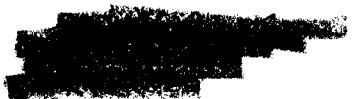
1. Enclosure (1) is returned. The member requests changes be made to his fitness report for the period 7 August 1999 to 28 July 2000.
2. Based on our review of the material provided, we find the following:
 - a. A review of the member's headquarters record revealed the report in question to be on file. 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. The member's statement and reporting senior's endorsement are properly reflected in his digitized record.
 - b. The report in question is a Detachment of Reporting Senior/Regular report. The member alleges the report was not a fair evaluation of his performance and he received a promotion recommendation of "Promotable" vice "Must Promote".
 - c. 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 must provide evidence to support the claim. I do not believe [REDACTED] has done so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the member's petition indicates the reporting senior acted for illegal or improper purposes or the report lacked rational support.

d. The fitness report appears to be procedurally correct. The reporting senior is charged with commenting on the performance or characteristics of each individual under his/her command and determines what material will be included in a fitness report. The contents and grades assigned on a fitness report are at the discretion of the reporting senior. The evaluation of a subordinate's performance and making recommendation concerning promotion recommendations and assignments are the responsibilities of the reporting senior.

e. The member filed an Article 138, Complaint of Wrongs to support his contentions. Per Reference (a), the GCM's action determined no relief was appropriate and was approved by reference (b).

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

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



Performance
Evaluation Branch