



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 2683-99

24 August 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 18 August 1999. 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 Commander, Navy Personnel Command dated 24 June 1999, 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. 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

Enclosure



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

1900  
PERS-821  
24 June 1999

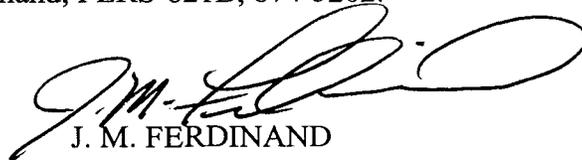
**MEMORANDUM FOR BOARD FOR CORRECTION OF NAVAL RECORDS**

Subj: EX-PETTY OFFICER [REDACTED]

Ref: (a) Chairman, BCNR ltr AEG:jdh Docket No: 2683-99 dtd 25 May 99

Encl: (1) Copy of Election of Options for Preliminary/Reconsidered Findings of Unfit for Duty

1. In response to reference (a), [REDACTED] was found unfit with a 10% disability rating on 19 October 98 and separated on 16 December 98 as authorized by PERS-821 message 230900Z OCT 98. Previously, [REDACTED] was assigned in a Limited Duty Status (ACC 105) from February 98 to August 98 as approved by PERS-821 message 190900Z MAR 98.
2. Upon receiving the preliminary findings, [REDACTED] was afforded the opportunity to request retirement under Temporary Early Retirement Act (TERA) during counseling by his Disability Counselor. As indicated in enclosure (1), Petty Officer Gallardo declined to apply for retirement under TERA.
3. In January 1999, all funding for the TERA was depleted for the fiscal year. TERA was designed to be only a temporary program to manage manpower excess and at this time, this office has received no indication of continuation of the program. Although Petty [REDACTED] indicates he has over 17 years of honorable service, unfortunately, there are currently no provisions that provide guaranteed continued service once the member has been found to be unfit. Title 10 USC, provides guaranteed continued service, unless discharged under other provisions of law, for members with over 18 years of service.
4. It is the recommendation of this office that [REDACTED] separation with severance pay remain in effect.
5. POC in the matter is Mr. J. M. Ferdinand, PERS-821B, 874-3202.

  
J. M. FERDINAND  
By direction



Date 07 OCT 98

From: [REDACTED] NMC SAN DIEGO, CA  
RANK/NAME SSN HOSPITAL

To: President, Physical Evaluation Board

Subj: ELECTION OF OPTIONS FOR PRELIMINARY/RECONSIDERED FINDINGS  
OF UNFIT FOR DUTY

Ref: (a) SECNAVINST 1850.4C  
(B) PEB ADBUL 1-97

1. I have been informed that the PEB finding in my case is UNFIT FOR DUTY, 10% SEPARATED, and have been counseled as to my alternatives. I understand the alternatives and make the following selection in accordance with section 5127 or 5129 of reference (a).

2. Select either a., b., or c. below by initialing selection.

a. SD I ACCEPT the Preliminary/Reconsidered Findings. I understand that it is subject to a legal review before becoming final. I waive my right to a formal hearing.

b. \_\_\_\_\_ I CONDITIONALLY ACCEPT the Preliminary/Reconsidered Findings, subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By conditionally accepting the findings, I waive my right to a formal hearing. If the conditions are not granted:

(1) \_\_\_\_\_ I DEMAND A FORMAL HEARING.

(2) \_\_\_\_\_ I request my case be FINALIZED.

c. \_\_\_\_\_ I do not accept the Preliminary/Reconsidered Findings, and I DEMAND A FORMAL HEARING. No conditional acceptances will be permitted subsequent to electing this option.

3. SD I have been counseled on obligated service by my Disability Evaluation Systems Counselor. (Ref (a) para 8006 refers)

