



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

SMC  
Docket No: 01581-99  
22 October 1999

SKC [REDACTED] USN  
[REDACTED]  
[REDACTED]

Dear Chief [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 21 October 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 the Navy Personnel Command dated 19 July 1999, a copy of which is attached, and your letter dated 13 September 1999 with enclosure

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 the recommendation to remove the comment "Counseled for appearance of an unduly familiar relationship with a subordinate." The Board noted the report at issue did not mention charges of which you were acquitted, nor did it state you committed misconduct. Rather, it stated you engaged in conduct which, the reporting senior felt, gave the appearance of impropriety. Contrary to the advisory opinion, the Board was unable to find the reporting senior violated the requirement to base your performance evaluation report on facts. Finally, they noted you did not complete the block of the contested report stating you intended to submit a statement, so block 46 properly does not show "UNSIGNED ADVANCE COPY - MEMBER PREPARING STATEMENT." 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

Enclosure



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

1610  
PERS-311  
19 JUL 99

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

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

Subj: SKC [REDACTED] USN [REDACTED]

Ref: (a) BUPERINST 1610.10

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his fitness report for the period 16 September 1997 to 15 September 1998.

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

a. A review of the member's digitized record revealed the fitness report in question to be on file. Block 46, Signature of Individual Evaluated, indicates that the member refused to sign the report. A NAVPERS 1070/613 is filed in the member's digitized record also indicating the member's refusal to sign the report.

b. The member alleges that the report in question is factually flawed by reporting events that did not take place, and circumstances that did not exist. The member feels that the fitness report is inaccurate, unjust, and wrongfully submitted.

c. The member alleges that during the period of report he did not receive mid-term counseling as indicated in his fitness report. Counseling on performance is mandatory per reference (a), Annex C. Since counseling may occur in several different ways (i.e., verbal, written), documentation of counseling is not mandatory. Based on the information provided with the member's petition, we can not determine if counseling was or was not performed; however, the reporting senior indicates that mid-term counseling was performed on 18 May 1998. The fact that counseling did or did not occur does not invalidate a report.

Subj: SKC [REDACTED], USN, [REDACTED]

d. The member feels that the comment regarding an unduly familiar relationship with a subordinate was based upon the fact that he was issued a Military Protective Order, concerning allegations of unduly familiar personal relationship with a subordinate. The member also provides with his petition a copy of the court martial finding worksheet, which acquits him of all charges. We feel the comment in block 41, "Counseled for appearance of an unduly familiar relationship with a subordinate", is inappropriate. Per reference (a), Annex N-13, we feel that the reporting senior's comment was solely based on appearance and not fact.

e. The member alleges that the comment in block 46, "Member refuses to sign" is totally false. The member alleges that his division officer presented the fitness report in question to him on 25 September 1998, at which time he refused to sign the report until he was able to meet with the Commanding Officer to discuss the adverse matter. Reference (a), Annex A, page A-16, states that the member's signature does not imply agreement with the report or satisfaction with counseling, but merely certifies that the member has seen the report and understands the right to submit a statement. We feel that the member's failure to sign the report when presented by the division officer, indicates his refusal to sign.

f. The marks, comments and recommendations are at the discretion of the reporting senior. The report represents the appraisal responsibility of the reporting senior for a specific period of time. It is not required to be consistent with previous or subsequent reports and is not routinely open to challenge.

3. We recommend removal of the comment in block 41, "Counseled for appearance of an unduly familiar relationship with a subordinate." We recommend retention of the report as modified.

[REDACTED]

Head, Performance Evaluation Branch