



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

BJG
Docket No: 7510-01
12 September 2002

BM1 [REDACTED] USN
2020 [REDACTED]
[REDACTED]

Dear Petty [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, advancement to chief petty officer (pay grade E-7), removal of the service record page 13 ("Administrative Remarks") entry dated 10 February 2001 documenting the withdrawal of your recommendation for advancement to E-7, and removal of your fitness report for 16 September 2000 to 10 February 2001.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 September 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 October 2001 and 25 March 2002, copies of which are attached. They also considered the Commander, Naval Surface Force, United States Atlantic Fleet letter dated 30 October 2001 and the Assistant Secretary of the Navy (Manpower and Reserve Affairs) letter dated 17 May 2002, both concerning your complaint under Article 138, Uniform Code of Military Justice. Finally, they considered your rebuttal letter dated 25 April 2002 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 concurred with the comments contained in the advisory opinions. They noted that your Article 138 complaint was denied. They found the preliminary inquiry of 24 January 2001, including the conclusion that you should receive a nonpunitive letter of instruction in the matter of fraternization, was not inconsistent with the withdrawal of your recommendation for advancement, nor was it inconsistent with the findings reflected in the contested page 13 entry and fitness report. They were unable to find the fitness report was improperly used as an alternative to disciplinary action. Finally,

they found the reporting senior's failure to mention your award of the Navy and Marine Corps Achievement Medal on 17 December 2000 did not invalidate the fitness report at issue. You may mention this medal if you choose to make a statement for the record. 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

Copy to:
The Honorable Michael Bilirakis



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

7510-01

1430
Ser 811
29 Oct 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

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

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
BML [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1430.16E

Encl: (1) BCNR file #07510-01

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.
2. Petty Officer [REDACTED] recommendation for advancement was removed by a fitness report ending 10 February 2001. This action resulted in his not being recommended for advancement to Chief Petty Officer and thereby not be eligible for advancement. This action was completed within the guidelines prescribed in reference (a). No relief is recommended regarding this petition.

[REDACTED]

By direction



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

7E10-01

1610
PERS-311
25 March 2002

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

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

Subj: BM1 (SW [REDACTED], USN [REDACTED])

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 September 2000 to 10 February 2001.
2. Based on our review of the material provided, we find the following:
 - a. A review of the member 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 did not desire to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement.
 - b. The report in question is a Special/Regular report submitted to withdraw Chief [REDACTED] recommendation for promotion.
 - c. The member filed an Article 138, Complaint of Wrongs to support his contentions. On 24 January 2001 a preliminary inquiry into the circumstances surrounding the allegations of fraternization and adultery was conducted. The preliminary inquiry dismissed the charges of adultery and recommended the member be issued a non-punitive letter of instruction. A Board of Inquiry (BOI) findings do not invalidate fitness reports.
 - d. The fitness report appears to be procedurally correct. The reporting senior may comment or assign grades based on performance of duty or events that occurred during the reporting period. Nothing provided in the member's petition demonstrates that the reporting senior acted improperly, violated requirements, or that he abused his discretionary authority in evaluating the member's performance. In this case the reporting senior has made it clear that the member's behavior was inappropriate and as a result lost confidence in the member.
 - e. 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