



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

HD:hd
Docket No: 00511-01
7 February 2002

LCDR [REDACTED] CHC USN
[REDACTED]
[REDACTED]

Dear Command [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 7 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 5 April, 23 July 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 agreed with the advisory opinions dated 5 April and 23 July 2001 in concluding that the contested fitness reports should stand. As they found no defect in your performance record, they had no basis to remove your failures by the Fiscal Year 00, 01 and 02 Staff 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**

1610
PERS-61/205
5 Apr 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] USN,
[REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 01 Mar 01
(b) OPNAVINST 5354.1E Navy EO Manual

Encl: (1) BCNR File 00511-01

1. Reference (a) requested an advisory opinion in response to Lieutenant Commander [REDACTED]'s request to delete from her record the five fitness reports from Jun 96 to Apr 99 due to discrimination and bias. She believes this is the reason she has failed to select twice for Commander. Enclosure (1) is returned.

2. Lieutenant Commander [REDACTED] states that the senior chaplain as well as her immediate supervisor exhibited gender discrimination and bias resulting in a hostile work environment and inaccurate assessments of her performance during the period Jun 96 through Apr 99. She asserts this occurred in spite of the laudatory comments she received from both the Commander, Naval Training Center and Commanding Officer, Service School Command. The disputed fitness reports, however, do not contain adverse information, and, in fact, do show a pattern of increasing/improving averaged grades and recommended promotion status: 3.5 for both the Jun-Oct 96 and Nov 96-Oct 97 fitness reports (both with "Promotable" recommendations); 4.16 for Nov 97-Oct 98 ("Must Promote"); and 4.33 for Nov 98-Apr 99 ("Early Promote"). One "Non Observed" fitness report for continuity purposes contained no grades or recommendations. Lieutenant Commander [REDACTED] checked the block that she did not wish to make a statement on all of the aforementioned graded reports, which were signed by Commander, Naval Training Center and not the chpalains she alleges discriminated against her.

3. That is not to say, of course, that discrimination did not occur. However, without additional supporting material or the results of an investigation into this matter, Lieutenant

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

Commander [REDACTED] claims of discrimination and bias can not be substantiated. Her personal opinion, particularly in light of the favorable and improving fitness reports and her failure to make statements at the time of the fitness reports, does not offer enough documentation to support her claim of discrimination and bias in accordance with reference (b). Absent any additional information/documentation, I recommend the five fitness reports be retained in her service record as they are written.

[REDACTED]

Director, Professional
Relationships Division
(PERS-61)



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

1610
PERS-311
23 July 2001

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

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

Subj: LCDR [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 the following fitness reports.

- 22 June 1996 to 28 June 1996
- 29 June 1996 to 31 October 1996
- 1 November 1996 to 31 October 1997
- 1 November 1997 to 24 October 1998
- 25 October 1998 to 31 October 1998
- 1 November 1998 to 9 April 1999

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

a. A review of the member's headquarters record revealed the fitness reports in question to be on file. All the reports are signed by the member acknowledging the contents of each report and her right to submit a statement with the exception of two reports that are NOB reports. The member did not desire to submit a statement.

b. The member requests the deletion of the fitness reports due to gender discrimination and bias.

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 or she must provide evidence to support the claim. I do not believe Lieutenant Commander [REDACTED] done so. Nothing provided in the member's petition indicate the reporting senior's acted for illegal or improper purposes or that the reports lacked rational support.

d. A fitness report is unique to the period of the report. The content and grades assigned on a fitness report are at the discretion of the reporting senior. The evaluation of a subordinate's performance and making recommendations concerning promotion and assignment are the responsibilities of the reporting senior.

e. The fact that previous and subsequent reports were excellent reports has no bearing on the fitness reports in question. A fitness report does not have to be consistent with previous or subsequent reports.

f. The member has provided two letters in support of her petition. One from RADM [redacted] Commander, First Coast Guard District and [redacted] Chaplain of the Coast Guard concerning her performance. However, this material does not show that her performance was incorrectly evaluated or the fitness reports are in error.

g. Enhancement of chances for promotion is not sufficient reason to remove a fitness report.

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

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

[redacted signature block]

Performance
Evaluation Branch



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

5420
PERS-85
16 Aug 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED] USN, [REDACTED]

Ref: (a) PERS-00ZCB memo of 5 April 2001
(b) PERS-311 memo of 23 July 2001

Encl: (1) BCNR File

1. Enclosure (1) is returned, concurring with the findings of ref (a) and (b) and recommending [REDACTED] record remain unchanged.

2. As [REDACTED] does not prove the fitness reports in question to be unjust or in error, her failures of selection for FY-00, FY-01 and FY-02 should remain in her record and a special selection board is not warranted.

[REDACTED]

BCNR Liaison, Officer Promotions
and Enlisted Advancements Division