



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

BJG  
Docket No: 1263-99  
12 November 1999

HM1 [REDACTED] USN  
[REDACTED]

Dear Petty Officer [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 10 November 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 opinions furnished by the Navy Personnel Command dated 28 May, 28 July, and 4 and 26 August 1999, 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 substantially concurred with the comments contained in the advisory opinions. They noted that the informal investigation, dated 8 April 1997, of the incident on 2 February 1997 involving you and your wife concurred with the decision to withdraw your recommendation for advancement to chief petty officer, and recommended that any future incidents involving serious misconduct on your part be referred to a court-martial. 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.

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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

1263-99



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

1610  
PERS-311  
28 MAY 99

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

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

Subj: HM1 [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual  
(b) BUPERSINST 1430.16D

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests modification of his performance reports for the following periods:

16 SEP 96 to 20 MAR 97  
21 MAR 97 to 31 JUL 97.

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

a. The first report (16 SEP 96 TO 20 MAR 97) is a Special report submitted to withdraw the member's recommendation for advancement. The member signed the report indicating his desire to submit a statement. A statement to the report is on file in the member's digitized record.

b. The second report (21 MAR 97 TO 31 JUL 97) is a Special report submitted to document completion of the Domestic Violence Treatment Program and current performance. The member signed the report indicating his desire not to submit a statement to the report. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired. PERS-311 has not received a statement from the member.

c. The member states that per reference (a), Annex D, paragraph D-9.e, declining performance or misconduct should normally be reported when the next fitness or evaluation report comes due. The member also alleges that the submission of the adverse performance reports was in violation of reference (a), due to all charges being dismissed.

Subj: [REDACTED]

d. The member provides a copy of an Article 138 with his petition. Based on the findings of an Article 138, the member's allegation is without merit and that no relief is granted.

e. The advancement recommendation represents the reporting senior's appraisal of the member's readiness for the duties and responsibilities of the next higher pay grade. It is made at the discretion of the reporting senior. Per reference (b), a member may be defrocked if a Commanding Officer (including Officers in Charge) deems a member unqualified to wear the uniform of a higher grade.

f. Reference (a), Annex D, paragraph D-9.e, states a Special report may be submitted if the reporting senior believes the facts should be placed on the record before the next occasion of report.

g. Reference (a), Annex N, paragraph N-13.a, states that comments may be included on misconduct whenever the facts are clearly established to the reporting senior's satisfaction.

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

{ 3. We recommend the member's petition be forwarded to the Director, Active Officer Promotion, Appointments, and Enlistment Advancements, PERS-85, for comment concerning the member's request to be reinstated to the rank of Chief Petty Officer.

{ 4. We recommend the member's petition be forward to the Director, Equal Opportunity Division, PERS-61, for comment on the member's allegation of retaliation.

5. We recommend retention of the performance reports as written.

[REDACTED SIGNATURE]

Head, Performance Evaluation Branch

1263-99



**DEPARTMENT OF THE NAVY**

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

1430  
Ser 852/243  
28 Jul 99

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  
HM1 (FMF) [REDACTED]

Ref: (a) BUPERSINST 1430.16D

Encl: (1) BCNR file #01263-99

1. Based on policy and guidelines established in reference (a) enclosure (1) is returned recommending disapproval.

2. As stated in reference (a) a commanding officer may withdraw an advancement recommendation at any time a member is determined to no longer be qualified for advancement to the next higher rate. The withdrawal of and advancement recommendation is the prerogative of the commanding officer. In the case of HM1 (FMF) [REDACTED] the withdrawal was accomplished in accordance with reference (a). Petty Officer [REDACTED] request is returned recommending disapproval.

[REDACTED]  
By direction

1263-99



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

1610  
PERS-61/078  
4 Aug 99

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 PETTY  
OFFICER [REDACTED], USN [REDACTED]

Ref: (a) PERS-00ZCB memo 1610 of 2 AUG 99  
(b) PERS-311 memo 1610 of 28 MAY 99  
(c) OPNAVINST 5354.4D, Navy EO Manual

Encl: (1) BCNR File 01263-99 w/Service record

1. References (a) and (b) requested an advisory opinion and comments concerning possible retaliation in the case of Petty Officer [REDACTED] request to remove two adverse evaluations from his record and return his rank of Chief Petty Officer. Enclosure (1) is returned.

2. Petty Officer Ffrench filed an Article 138 against the Commanding Officer, Naval Hospital, Pensacola, because he felt the CO had unjustly ratified the action of the Officer in Charge, Branch Medical Clinic, Naval Air Station Whiting Field, who had defrocked Petty Officer [REDACTED] from the rank of Chief Petty Officer. The reason for the defrocking by the OIC was due to a pattern of spouse abuse in addition to a substantiated case of spouse abuse on 2 February 1997.

3. The Article 138 went up the chain to Commander, Naval Education and Training, who has court-martial jurisdiction. Petty Officer [REDACTED] allegations of improper administrative action were unsubstantiated.

4. It is my opinion the administrative actions taken by Petty Officer [REDACTED] chain of command were proper and without retaliation in accordance with reference (c). I recommend his record stand as currently documented.

[REDACTED]

Director, Professional  
Relationships Division  
(PERS-61)

1263-99



**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND**

**5720 INTEGRITY DRIVE**

**MILLINGTON TN 38055-0000**

1752

Ser 661/227

26 Aug 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

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

Subj: COMMENTS AND RECOMMENDATION IN CASE OF [REDACTED]  
[REDACTED]

Ref: (a) COMNAVPERSCOM memo 5420 (PERS-00ZCB) of 4 Aug 99

Encl: (1) BCNR File 01263-99

1. Reference (a) requested review and comments to correct errors and/or remove injustices in HM1 [REDACTED] service record.

2. Review of Family Advocacy Program (FAP) information indicated that allegations of spouse abuse by [REDACTED] toward his wife were substantiated by the [REDACTED] Case Review Committee (CRC) on 13 March 1997, in connection with an incident on 2 February 1997. He was reported to have hit his wife repeatedly on the face, head and arms, resulting in a bruise to her upper arm. He was then reported to have ripped the phone from the wall when she went to phone police. [REDACTED] admitted to the Family Advocacy Representative (FAR) that he slapped his wife multiple times across the face. This was not the first incident of spouse abuse by [REDACTED]. Record review indicated two prior incidents of alleged spouse abuse by the servicemember at Camp Pendleton; an unsubstantiated incident in 1993 and a substantiated 1995 incident. [REDACTED] is compliant with all FAP recommended interventions in 1997. The FAP case was closed as resolved on 3 December 1997.

3. In regard to the concerns expressed by HM1 [REDACTED] about FAP notification and receiving results of the CRC proceedings, the FAP record indicates that HM1 [REDACTED] was notified prior to the CRC meeting. He was advised of the right for his command to have a representative present. There is no requirement and no right for the member to attend the CRC. He was informed in person of the CRC results and recommendations. Finally, the FAP record and enclosure (1) indicates he was notified of his right to rebut the findings of the CRC.

Subj: COMMENTS AND RECOMMENDATION IN CASE OF [REDACTED]

4. Disciplinary action in response to incidents of family violence is the command's discretion. The command acted within their right and responsibility in regards to Navy FAP policy. Therefore, disapproval of the servicemember's petition is recommended.

[REDACTED]

Director, Personal, Family and  
Community Support Division  
(PERS-66)