



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

HD:hd
Docket No: 07421-98
9 June 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 13 Oct 98 w/attachments
(2) NPC-311 memo dtd 26 Mar 99
(3) NPC-85 memo dtd 5 Apr 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 31 October 1995 to 16 August 1996, a copy of which is at Tab A. Petitioner further requested removal of his failures of selection for promotion before the Fiscal Year (FY) 98, 99 and 00 Commander Line Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Ms. Davies and Gilbert and Mr. Leeman, reviewed Petitioner's allegations of error and injustice on 4 June 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner initiated and cooperated in two Department of Defense (DOD) Inspector General (IG)/Naval Criminal Investigative Service (NCIS) investigations involving potential criminal conduct in the acquisition process. Among his allegations of impropriety was that the Naval Air System Command and specifically PMA-205, his office, was improperly making reimbursable orders to Naval Undersea Warfare Center (NUWC), Keyport,

Washington, for intraagency contracting and that NUWC, Keyport charged various improper taxes to reimbursable customers in addition to the approved rates authorized to be charged by Keyport. Further, he alleged that Keyport was providing office furnishings and other equipment to government contractors in violation of the law and DOD contracting regulations. As a result of these allegations, a joint investigation was conducted and his allegations were substantiated.

c. Petitioner contends that the contested fitness report was in reprisal for his role in the investigations. In this regard, he notes that they occurred during the reporting period in question; that he made no effort to hide his cooperation in a proper investigation of PMA-205's and Keyport's conduct; that as a result of the DODIG investigation, DODIG was critical of the NAVAIR PMA-205 leadership; and that during the pendency of the DODIG/NCIS investigation, and while he was cooperating with it, the Director of PMA-205 provided him the fitness report at issue. He further notes that this fitness report, the third fitness report prepared on him by the same reporting senior, is marked significantly lower than the two previous reports; yet the reporting senior provided no factual explanation for the lower marks, nor did he seek to explain the apparent decline he observed in Petitioner's performance.

d. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) office having cognizance over fitness report matters has commented that in view of the results of the DODIG investigation, they recommend that the fitness report in question be removed from Petitioner's record.

e. In correspondence attached as enclosure (3), the NPC office having cognizance over active duty promotions has commented to the effect that Petitioner's request to remove his failures of selection by the FY 98 and 99 Commander Line Selection Boards should be approved if the contested fitness report is removed from his official record. They further recommended that upon approval of his request to remove his failures of selection, his record go before the next regularly scheduled special selection board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting the requested corrective action.

In finding Petitioner's failures of selection for promotion should be removed, they note the advisory opinion at enclosure (3) recommends removing his failures by the FY 98 and 99 promotion boards. They find this opinion equally applicable as a basis for removing the FY 00 failure.

The Board does not agree with the recommendation at enclosure (3) that Petitioner's record go before the next regularly scheduled special selection board, since he did not request this.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of	Report To
96Aug16	[REDACTED] USN	95Oct31		96Aug16

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director

7421-98



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

1610
NPC-311
26 March 1999

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

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

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 31 October 1995 to 16 August 1996.

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

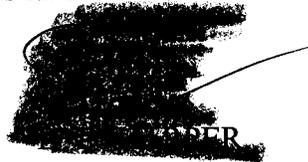
a. A review of the member's headquarters record revealed the report in question to be on file. The report is signed by the member acknowledging the contents of the report and his right to submit a statement. Although the fitness report is adverse, the member indicated in block-46 he did not desire to submit a statement.

b. The member alleges the fitness report was based on his initiation in two DOD-IG/NCIS investigations, also reported to the DOD Hotline which resulted in the command being investigated for potential criminal conduct in the acquisition process and reimbursable orders issued to Naval Undersea Warfare Center, Keyport, WA.

c. Although a fitness report does not have to consistent with prior reports, inconsistencies as those in [REDACTED] case should have a clear explanation in the comment section to prevent questions or speculation by a selection board. We note the significantly higher grades on the two subsequent fitness reports by the same reporting senior.

d. In January 1995 the member initiated two DOD-IG/NIS investigations. On 29 January 1997 the office of the Inspector General issued the results in which the complaint was substantiated. The result of the NCIS investigation was not provided with the member's petition and he requested BCNR obtain a copy of any unredacted NCIS final or interim report.

3. In view of the results of the DOD/IG investigation, we have no objection to removal of the fitness report in question
4. In view of the results of the DOD/IG investigation, we recommend the fitness report in question be removed from the member's record.
5. We recommend the member's petition be forwarded to the Director, Active Officer Promotion, Appointments, and Enlisted Advancement Division (NPC-85) for comments on the member's request for removal of his failure of selection.

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Head, Performance
Evaluation Branch

7421-98



DEPARTMENT OF THE NAVY

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

5420
Ser 85/050
5 Apr 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED]

Ref: (a) NPC-311 memo 1610 of 26 Mar 99

Encl: (1) BCNR File

1. Enclosure (1) is returned. Recommend approval of LCDR [REDACTED] request for removal of his failures of selection resulting from the FY-98 and FY-99 Active Commander Line Promotion Selection Boards if the fitness report covering the period 31 October 1995 to 16 August 1996 is removed from his official record.

2. Based on the modifications of [REDACTED] record addressed in reference (a), the overall quality and competitiveness of his record significantly improves. Upon approval of his request for removal of his failures of selection, recommend his record go before the next regularly scheduled special selection board.

[REDACTED]

BCNR Liaison, Officer Promotions
and Enlisted Advancements Division