



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

SMC
Docket No: 03246-98
21 May 1999

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

Subj: MSC (SW) [REDACTED], USN, [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 14Apr98 w/attachments
(2) Pers-31 memo dtd 17Sep98
(3) BCNR memo dtd 25Nov98
(4) NPC-31 memo dtd 1Feb99
(5) 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 enlisted performance evaluation report for 16 September to 29 September 1995, and an undated "Evaluation Report Administrative Change" letter. Copies of the report and the administrative change letter are at Tab A.
2. The Board, consisting of Messrs. Pauling, Schultz and Exnicios, reviewed Petitioner's allegations of error and injustice on 20 May 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. The office within the Department of the Navy having cognizance over the subject matter addressed in Petitioner's application has issued two advisory opinions. The first, at enclosure (2), recommended removal of the contested report, on the erroneous premise that it was a duplicate report; and retention of the administrative change letter, on the erroneous premise that it maintains continuity in Petitioner's performance evaluation record.

c. By the letter at enclosure (3), the Board's staff advised the responsible office of the erroneous aspects of their advisory opinion at enclosure (2).

d. Enclosure (4), a revised advisory opinion issued in response to enclosure (3), comments to the effect that the contested report should be retained, but that the administrative change letter warrants removal.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the undated "Evaluation Report Administrative Change" letter, signed by Captain [REDACTED], USN (fiche 2E, row B, frame 13).

b. 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.

c. 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.

d. That the remainder of Petitioner's request be denied.

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
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



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL
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3246-48

IN REPLY REFER TO

1610
Pers-31
17 SEP 98

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

Via: BUPERS/BCNR Coordinator (Pers-00XCB)

Subj: MSC [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.9A, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of a duplicate performance report for the period of 16 September 1995 to 29 September 1995, and removal of an administrative change letter.

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

a. A review of the member's headquarters record revealed a duplicate performance report for the period of 16 September 1995 to 29 September 1995 to be on file. An administrative change letter was received by Pers-322 and filed in the member's headquarters record on 8 January 1997. The member signed the report in block 44 acknowledging the contents of the report and his right to submit a statement in accordance with regulations; however, the member did not indicate he desired to submit a statement.

b. The member alleges that his performance report for the period in question has major discrepancies in it and should be removed from his headquarters record. Administrative errors in a performance report does not invalidate the report. The report appeared to have been prepared in accordance with reference (a), Chapter 2. The report is valid.

c. An administrative change letter was prepared in accordance with reference (a), Chapter 10, paragraph 10-2, correcting administrative errors on the original performance report for the period in question. The administrative change

Encl (2)

Subj: MSC [REDACTED] USN [REDACTED]

letter is valid and maintains continuity.

d. The member does prove the duplicate report to be in error.

3. We recommend removal of the duplicate performance report for the period of 16 September 1995 to 29 September 1995, and retention of the administrative change letter.

[REDACTED]

Head, Performance
Evaluation Branch

25 November 1998

MEMORANDUM

From: Case Examiner, BCNR
To: NPC-31
Via: NPC-00ZCB

Subj: ADV OPINION ICO MSC [REDACTED] US [REDACTED]

Encl: (1) BCNR file, Docket No: 03246-98
(2) Pers-31 memo dtd 17 Sep 98

1. In his application at enclosure (1), MSC [REDACTED] requests removal of what he calls a "duplicate" enlisted performance evaluation report for 16 to 29 Sep 95, and an undated administrative change letter pertaining to that report.
2. The advisory opinion at enclosure (2) recommends removal of the "duplicate" report for 16 to 29 Sep 95, but retention of the administrative change letter. The opinion appears to contradict itself, in that paragraph 2.b states "The report [for the period in question] is valid", while paragraph 2.d states "The member does prove the duplicate report to be in error." Further, although paragraph 2.c says "The administrative change letter is valid and maintains continuity," it would appear that eliminating the report to which the letter relates, as the advisory opinion recommends, would necessarily invalidate the letter.
3. [REDACTED]'s microfiche record at enclosure (1) contains only one report for 16 to 29 Sep 95, so it would appear incorrect to refer to it as a "duplicate." The record further reflects that the administrative change letter does not maintain continuity, but takes it away. The letter purports to change the contested "not observed" MSC transfer report for 16 to 29 Sep 95 into an MS1 advancement report for 6 Jan to 15 Sep 95. The record includes an observed MS1 advancement report for 6 Jan to 15 Sep 95. The changes reflected in the administrative change letter leave [REDACTED] with no transfer evaluation for 16 to 29 Sep 95 (the record shows a report from a new station beginning 30 Sep 95).
4. From the above, it appears the right action would be to remove the administrative change letter on the basis that it is invalid, unnecessary and confusing, but leave in the record the contested report on the basis that it is a valid transfer report submitted to maintain continuity.
5. Your further comment in response to the foregoing will be appreciated.

[REDACTED]



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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1616
NPC-31 9
1 FEB 98

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

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

Subj: MSC [REDACTED], USN, [REDACTED]

Ref: (a) Pers-31 memo dtd 17 SEP 98
(b) BCNR memo dtd 25 NOV 98
(c) BUPERSINST 1616.9A, EVAL Manual

Encl: (1) BCNR File

1. Request cancel reference (a).
2. Enclosure (1) is returned. The member requests removal of a duplicate performance report for the period of 16 September 1995 to 29 September 1995, and removal of an administrative change letter for the same period in question.
3. As requested by reference (b), we provide the following comments:
 - a. A review of the member's digitized record does not reveal a duplicate report for the period in question; however, the member's digitized record does reveal a duplicate report for the period 6 January 1995 to 15 September 1995 to be on file. Further review of the member's record also revealed an administrative change letter for the period 16 September 1995 to 29 September 1995 was received by Pers-322 and filed in the member's digitized record.
 - b. The member alleges that his performance report for the period 16 September 1995 to 29 September 1995 has major discrepancies in it and should be removed from his digitized record. The report for the period in question is a "Not Observed" report. The report was prepared on the occasion of the member's transfer. We are unable to determine why the member feels the performance report for the period in question consists of major discrepancies. The report appears to have been prepared in accordance with reference (c), Chapter 2 and is a valid report.

Subj: MSC [REDACTED], USN, [REDACTED]

c. An administrative change letter was prepared in accordance with reference (c), Chapter 10, paragraph 10-2, correcting administrative errors on the original performance report for the period in question; however, the administrative change letter incorrectly changes the member's rate, block 2, to MS1 vice MSC and incorrectly changes the occasion of report from "Transfer" to "Advancement". Also, the administrative change letter takes away report continuity, leaving [REDACTED] with no transfer evaluation.

e. The member does prove the administrative change letter to be in error.

3. We recommend retention of the report for the period of 16 September 1995 to 29 September 1995, removing the administrative change letter for the same period. We have administratively removed the duplicate report for the period of 6 January 1995 to 15 September 1995 from the member's digitized record.

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Head, Performance
Evaluation Branch