



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 08408-98

20 May 1999

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

Subj: AD2 [REDACTED], USN, [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 22Nov98 w/attachment
(2) NPC-311 memo dtd 23Apr99
(3) Unfavorable Separations System document ICO
Subject, provided by PERS-832C
(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 enlisted performance evaluation report for 1 April 1995 to 15 March 1996. A copy of this report is at Tab A.

2. The Board, consisting of Messrs. Pauling, Schultz and Zsalman, 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. In the advisory opinion attached as enclosure (2), the Navy Personnel Command (NPC) office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that her request has merit and warrants favorable action. Enclosure (3) supports the NPC opinion.

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 following corrective action.

RECOMMENDATION:

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

Date of Report	Reporting Senior	Period From	of Report To
28Mar96	XXXXXXXXXXXX , USN	1Apr95	15Mar96

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 such 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.

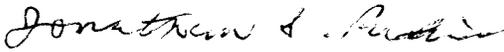
c. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

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

8408-98



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

1610
NPC-311
23 APR 99

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

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

Subj: AD2 [REDACTED], USN, [REDACTED]

Ref: (a) BUPERINST 1610.10, EVAL Manual
(b) Pers-832C msg 131856ZSEP96

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of her performance report for the period 1 April 1995 to 15 March 1996.

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

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating she does not desire to submit a statement. Per reference (a), the member has two years from the ending date to submit a statement if desired. A statement was not received by Pers-322 from the member. A further review of the member's digitized record also revealed missing performance reports for the period 2 October 1996 to 15 March 1998.

b. The member alleges that the comment in the report in question "Tested positive for drug use on urinalysis screen and recommended for Other Than Honorable Discharge by Administrative Board on 21 FEB 96." is inappropriate, since being exonerated of all charges. Per reference (a), Annex N, paragraph N-13, comments may be included on misconduct whenever the facts are clearly established at the reporting senior's satisfaction. Per reference (b), all charges on the member were dismissed due to the counsel determining that the urinalysis testing was flawed. We feel that at the time of the report the comments were appropriate; however, based on reference (b), we feel that the comments are now inappropriate.

c. The member does prove the report to be unjust or in error.

Subj: AD2, [REDACTED], USN, [REDACTED]

3. We recommend removal of the report in question, replacing it with a SECNAV memo. We also recommend the member provide NPC-311 with a copy of the missing reports for the period 2 October 1996 to 15 March 1998, in order to update her digitized record.

[REDACTED]

Head, Performance
Evaluation Branch