



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

SMC
Docket No: 00108-00
9 March 2001

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

Sub: ET1 [REDACTED], USN [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 20Dec99 w/attachments
(2) PERS-832C memo dtd 24Apr00
(3) PERS-311 memo dtd 19May00
(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 all reference to his nonjudicial punishment (NJP) of 17 December 1998, to include the punitive letter of admonition dated 22 January 1999 and service record page 13 ("Administrative Remarks") entries, in light of the action to set aside the NJP. Petitioner's command may remove from his field service record any page 13 entries or other documentation relating to the NJP. The only references to the NJP in his official headquarters record appear in the performance evaluation reports for 16 November to 15 November 1999 and 16 November to 18 December 1999 (special). Copies of these reports are at Tabs A and B.

2. The Board, consisting of Mses. Davies and Humberd and Mr. Swarens, reviewed Petitioner's allegations of error and injustice on 8 March 2001, 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 correspondence attached as enclosures (2) and (3), the Navy Personnel Command offices having cognizance over the subject matter addressed in Petitioner's application have commented to the effect that his request has merit and warrants favorable action.

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 reports and related material:

Date of Report	Reporting Senior	Period of Report From	To
28Nov99	CAPT ██████████ USN	16Nov98	15Nov99
21Dec99	CAPT ██████████ USN	16Nov99	18Dec99

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report for 16 November 1998 to 15 November 1999, 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 NO memorandum be filed to replace the removed special report for 16 November to 18 December 1999, as this report is not necessary for continuity.

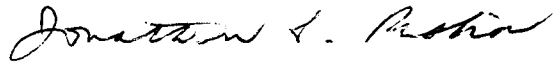
d. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

e. 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.

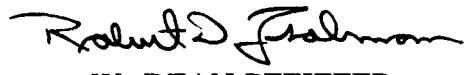
f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.


For W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

5420

PERS-832C

24 Apr 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

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

Subj: ET [REDACTED] USN [REDACTED]

Encl: (1) BCNR File 00108-00
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material.

2. The review reveals that the NJP of 17 Dec 98 was set aside on 18 Dec 99. Therefore, all references to that NJP must be removed from the record.

[REDACTED]

Technical Advisor to the
Head, Enlisted Performance
Branch (PERS-832)



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

1610
PERS-311
19 May 2000

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

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

Subj: ET [REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) Naval Personnel Command ltr 5420 PERS-832C of 24 April 2000

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of all references to him receiving NJP on 17 December 1998.

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

a. A review of the member's headquarters record revealed the performance evaluation for the periods 16 November 1998 to 15 November 1999 and 16 November 1999 to 18 December 1999 that documented the member receiving NJP.

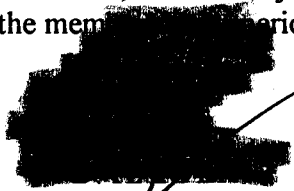
b. The member provided a letter with his petition from his Commanding Officer stating the NJP was set-aside as of 18 December 1999 and all the member's rights and privileges restored. Per reference (a), Annex S, paragraph S-12, and reference (b), the comments in the original reports are now inappropriate.

c. The member proves the report to be in error.

3. We recommend the following:

a. Removal of the 16 November 1998 to 15 November 1999 report and replacing it with a no fault continuity memorandum. Deleting the bullet concerning NJP and leaving the report in the official record, shows a decline in performance from the last report.

b. We also recommend removal of the 16 November 1999 to 18 December 1999 Special report. By deleting the bullet concerning the "set-aside", there is no justification for the Special report. The period of the report should be included in the mem[redacted] periodic report.



Head, Performance
Evaluation Branch