



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

HD:hd
Docket No: 07085-00
28 August 2001

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

Subj: LT CO [REDACTED], MC, USNR [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 12 Oct 00 w/attachments
(2) PERS-311 memo dtd 17 Jan 01
(3) BUPERS Ser 833D memo dtd 2 Mar 01 w/enclosure
(4) PERS-06L6 memo dtd 27 Mar 01
(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 all adverse materials which resulted from his nonjudicial punishment (NJP) dated 18 June 1999. He further requested removal of the fitness report for 1 February to 8 July 1999 and the Deputy Secretary of Defense letter of 18 April 2000 which removed his name from the report of the Fiscal Year 2000 Active Lieutenant Commander Staff Selection Board. Copies of the contested fitness report and letter are at Tabs A and B, respectively.

2. The Board, consisting of Messrs. Cooper, Swarens and Taylor, reviewed Petitioner's allegations of error and injustice on 23 August 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. Petitioner contends that all adverse material in his official record was the result of a punitive letter of reprimand which was determined to be unjust, in light of the results of a fact finding investigation, and has since been set aside.

c. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has recommended approving Petitioner's request to remove the contested fitness report. They stated that the Commanding Officer, Submarine Squadron Support Unit, Norfolk letter of 13 April 2000 set aside Petitioner's NJP; that the fitness report comments concerning the NJP and the mark in block 33 ("Professional Expertise") are now considered to be inappropriate; and that they recommend removing the fitness report, as they cannot determine the mark or promotion recommendation Petitioner now deserves.

d. In correspondence attached as enclosure (3), PERS-833, the Bureau of Naval Personnel office having cognizance over officer post-selection board matters, has commented that on 18 April 2000, they were notified that action had been taken to set aside Petitioner's NJP; that on 18 April 2000, the Deputy Secretary of Defense signed the contested letter and it was staffed for forwarding to the White House; that on 19 April 2000, they notified the chain of command, which included the Chief of Naval Personnel's legal counsel, that Petitioner's NJP had been set aside; that on 20 April 2000, they were notified that the Deputy Secretary of Defense had signed the letter and it was forwarded to the White House on 20 April 2000; and that on 24 April 2000, the Chief of Naval Personnel's legal counsel advised them that in discussion with the Chief of Naval Operations legal counsel and the Secretary of the Navy's legal counsel, it was determined that it was too late to change the language in the letter, and it was also determined that although Petitioner's NJP had been set aside, the misconduct still occurred, so his removal from the promotion board report was still appropriate. PERS-833 recommends disapproving Petitioner's request to remove the letter which removed his name from the promotion board report. Instead, they recommend redacting the language pertaining to the NJP and the punitive letter of reprimand. They specifically recommend striking out or blackening "For this conduct, [Petitioner] received a punitive letter of reprimand for dereliction of duty" and "...and did not appeal his nonjudicial punishment."

e. In correspondence attached as enclosure (4), PERS-06L6, the NPC Office of Legal Counsel, has commented that they recommend favorable action on Petitioner's request to have removed from his permanent record all reference to the NJP which has been set aside, but do not recommend favorable action on his request to remove the contested letter.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), (3) and (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 therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
99Jul09	CAPT ██████████ N	99Feb01	99Jul08

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 his naval record be corrected further by modifying as follows the Deputy Secretary of Defense memorandum for the President dated 18 April 2000:

(1) From the second paragraph, delete the entire second sentence, which reads as follows: "For this conduct, [Petitioner] received a punitive letter of reprimand for dereliction of duty."

(2) From the second paragraph, delete the following portion of the third sentence: "and did not appeal his nonjudicial punishment" so this sentence as corrected will read as follows: "[Petitioner] admitted culpability."

d. That any other reference to Petitioner's NJP of 18 June 1999 be removed from his naval record.

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.

g. 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
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