



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

HD:hd  
Docket No: 00257-02  
16 October 2002

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

Subj: CDR [REDACTED] R. IIS [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 2 Jan 02 w/attachments  
(2) PERS-OOH memo dtd 21 Mar 02  
(3) PERS-311 memo dtd 5 Jun 02  
(4) Subject's ltr dtd 29 Sep 02  
(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 three fitness reports, for 1 April to 31 August 1999, 1 April to 30 September 1999 and 1 October 1999 to 12 September 2000 (copies at Tabs A through C, respectively). He further requested that his Performance Summary Report (PSR) be corrected accordingly.

2. The Board, consisting of Messrs. Rothlein, Swarens and Zsalman, reviewed Petitioner's allegations of error and injustice on 10 October 2002, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that all three contested reports reflect reprisal against him, as the same reporting senior at Commander in Chief, Pacific Fleet (CINCPACFLT) submitted all three reports after Petitioner had complained to the CINCPACFLT inspector general about command practices he considered improper.

d. Specifically concerning the contested report for 1 April to 30 September 1999, Petitioner contends this report, with an "X" in block 10 indicating it is a periodic report, was essentially a photocopy of the contested report for 1 April to 31 August 1999, which has an "X" in block 11 indicating it is a detachment of individual report. Both reports reflect exactly the same marks and comments. Petitioner says his signature in block 46 was transferred from the prior report ending 31 August 1999; and that he never saw the report ending 30 September 1999 before it was submitted for file in his record. This report begins on the same date as the contested report ending 31 August 1999; block 15 (ending date) shows "99AUG31" lined out, with "99SEP30" typed in its place with the reporting senior's initials alongside. In both reports, the signatures of Petitioner and the reporting senior are dated 15 September 1999. The name "Anita Hill" is handwritten at the top of the first page of the report ending 30 September 1999. Petitioner contends this is further evidence that not only this report, but also the other two reports at issue were submitted in reprisal for his having been a "whistleblower."

e. Regarding the disputed report for 1 October 1999 to 12 September 2000, Petitioner alleges that his signature in block 32, acknowledging midterm counseling, is a forgery, as he was not counseled. He says another person placed the "X" in the block 46 box indicating "I do not intend to submit a statement." This report reflects an "X" in both blocks 10 (periodic report) and 11 (detachment of individual).

f. With respect to the PSR, Petitioner objects that the entries for 1 April to 30 September 1999 do not match the report for that period.

g. In correspondence at enclosure (2), PERS-00H, the Navy Personnel Command (NPC) equal opportunity office, has commented to the effect that the report for 1 April to 30 September 1999 should be removed, as the fact that "Anita Hill" is written at the top is "highly unusual and may indicate a form of reprisal." They stated they did not have enough information to determine if the other two reports at issue were based on reprisal.

h. In correspondence attached as enclosure (3), PERS-311, the NPC office having cognizance over officer fitness reports, has commented that they concur with the PERS-00H recommendation to remove the report for 1 April 1999 to 30 September 1999. They noted that removing this report would also correct the error in the PSR. They further recommended modifying, rather than removing, the other two reports in question. In the report for 1 April to 31 August 1999, they recommended moving the "X" from block 11 (detachment of individual) to block 10 (periodic), and changing block 15 (ending date) from 31 August 1999 to 30 September 1999. They recommended modifying the report for 1 October 1999 to 12 September 2000 by deleting the "X" from block 10, as the date in block 15 is not the ending date for a periodic report.

i. The promotion recommendation in all three contested reports is "Promotable," the third best. The two immediately preceding reports, from different reporting seniors and different stations (8 January to 24 June 1997 and 25 June 1997 to 18 September 1998), marked Petitioner "Early Promote," the best.

j. Petitioner's letter at enclosure (4) renews his request to remove all three fitness reports at issue. He states his petition may seem unusual if for no other reason than the brazenness of the misconduct he is alleging on the part of those responsible for these reports. He asks that this Board not be dismissive of his allegations. He expresses his belief that the fact someone wrote "Anita Hill" on one of the reports, by itself, is enough to warrant the requested relief. He reiterates that all three reports followed his complaint to the inspector general, and he maintains that "my evaluator's true motives are literally scrawled over the top" of the report ending 30 September 1999.

**CONCLUSION:**

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting full relief.

The Board agrees with the advisory opinions in concluding that the report for 1 April to 30 September 1999, marked [REDACTED] should be removed. They are also troubled that this report virtually duplicates the report for 1 April to 31 August 1999, and might well even have used Petitioner's signature on that report, which is dated 15 September 1999, well before the 30 September 1999 ending date.

Contrary to the advisory opinions, they find the other two reports at issue should be removed as well. They are satisfied that all three reports, written by the same reporting senior at the same station, were tainted by reprisal for Petitioner's complaint to the command inspector general. In this regard, they particularly note the dramatic decline in his promotion recommendation, in the contested reports, from the two immediately preceding reports.

Specifically concerning the report for 1 April to 31 August 1999, they find this report is invalid on its face, as it was submitted on the occasion of Petitioner's detachment, but he did not actually detach until 12 September 2000.

The Board considers the irregularities in the reports ending 31 August and 30 September 1999 effectively overcome the presumption of regularity for all the reports CINCPACFLT submitted on Petitioner.

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

**RECOMMENDATION:**

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

Date of Report	Reporting Senior	Period From	of	Report To
99Sep15	RADM [REDACTED] USNR	99Apr01		99Aug31
99Sep15	RADM [REDACTED] USNR	99Apr01		00Sep30
00Sep21	RADM J. [REDACTED] USNR	99Oct01		00Sep12

b. That there be inserted in Petitioner's naval record ONE memorandum in place of the removed reports containing appropriate identifying data; that the memorandum state that the portion of Petitioner's fitness report record for 1 April 1999 to 12 September 2000 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 removed material.

c. That Petitioner's PSR be corrected accordingly.

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. 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.

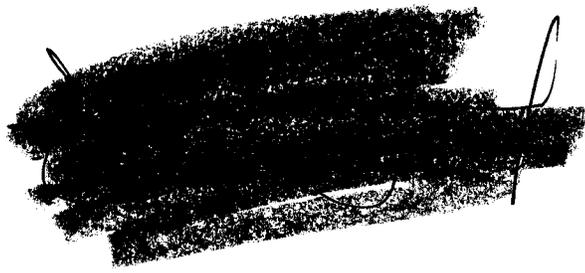
ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN FEIFFER

Reviewed and approved: NOV 22 2002





DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

257-02

1610  
PERS-00H/339  
21 Mar 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
COMMANDER [REDACTED] JR., [REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 19 Feb 02  
(b) OPNAVINST 5354.1E (Navy Equal Opportunity  
Manual)  
(c) PHONCON NPC (P00H) [REDACTED] 18 Mar 02  
(d) SECNAVINST 5370.7B (Military Whistleblower  
Protection)

Encl: (1) BCNR File 00257-02

1. Reference (a) requested an advisory opinion in response to [REDACTED] request that three fitness reports dated 99AUG31, 99SEP30, and 00SEP12, be deleted from his permanent record, because "they were not generated in substantial compliance with applicable regulation".

2. In my opinion, there does not appear to be evidence of unlawful equal opportunity discrimination against [REDACTED] based on race, ethnicity, national origin, sex, or religion as described in reference (b). In addition, per reference (c), [REDACTED] does not believe that he experienced unlawful equal opportunity discrimination.

3. However, the information I have reviewed indicates CDR [REDACTED] have suffered reprisal as described under the Military Whistleblower Protection Act (ref (d)). According to [REDACTED] he notified the Navy Inspector General's office of alleged mismanagement at CINCPACFLT N40 during the same time his 99AUG31 fitness report was being prepared. The fact that "Anita Hill" is written at the top of his fitness report dated 99SEP30 is highly unusual and may indicate a form of reprisal.

4. I recommend that the fitness report dated 99SEP30, with [REDACTED] written at the top, be deleted from his record. I

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
COMMANDER [REDACTED] R., USN [REDACTED]

also recommend that his performance summary report is corrected to reflect his actual fitness report performance traits.

5. In reference to the fitness reports dated 99AUG31 and 00SEP12, respectively, I do not have enough information to determine if these fitness reports were written based on reprisal. It is noteworthy that the performance trait "Mission Accomplishment and Initiative" was downgraded from a 4.0 on the 99AUG31 and 99SEP30 reports, to a 3.0 on the 00SEP12 report. Further investigation may be required to reach a valid determination. Enclosure (1) is returned.

[REDACTED]

Director, Navy Equal  
Opportunity Office  
(PERS-00H)



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

257.02  
1610  
PERS-311  
5 June 2002

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

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

[REDACTED]

Ref: (a) PERS-OOH memo 1610 PERS-OOH/339 of 21 March 2002

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 April 1999 to 31 August 1999, 1 April 1999 to 30 September 1999 and 1 October 1999 to 12 September 2000 and correct his Performance Summary Report (PSR).

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

a. A review of the member's headquarters record revealed the reports in question to be on file. The reports are signed by the member acknowledging the contents of each and his right to submit a statement. The member did not desire to submit a statement.

b. The fitness report for the period 1 April 1999 to 31 August 1999 is an AT/ADSW/Detachment of Individual/Regular report. The fitness report for the period 1 April 1999 to 30 September 1999 is an AT/ADSW/Periodic/Regular report. The fitness report for the period 1 October 1999 to 12 September 2000 is a Detachment of Individual/Regular report. The member alleges the reports were not generated in substantial compliance with applicable regulations.

c. We concur with reference (a) concerning the member's fitness reports. We also recommend additional partial relief.

3. We recommend the following in addition to removal of his original fitness report for the period 1 April 1999 to 30 September 1999: Removal of this report would also correct the member's PSR.

a. For the fitness report for the period 1 April 1999 to 31 August 1999. We recommend a "X" be placed in block-10 and delete the "X" in block-11, and change block-15 to read 30 September 1999 vice 31 August 1999.

b. For the fitness report for the period 1 October 1999 to 12 September 2000. We recommend the "X" in block-10 be deleted, as block-15 is not the ending date for a periodic report.



Performance  
Evaluation Branch