



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

HD:hd
Docket No: 02175-02
2 December 2002

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

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

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

Encl: (1) DD Form 149 dtd 5 Mar 02 w/attachments
(2) PERS-311 memo dtd 22 Aug 02
(3) PERS-80 memo dtd 25 Oct 02
(4) Subject's ltr dtd 20 Nov 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 that the applicable naval record be corrected by completely removing the fitness reports for 2 May to 31 October 2000 and 1 November 2000 to 22 January 2001, copies of which are at Tab A. He further requested promotion to commander in Fiscal Year (FY) 02, impliedly requesting removal of his failures of selection by the FY 02 and 03 Line Commander Selection Boards (the FY 03 failure occurred after he had applied). As indicated in paragraph 3.e below, he has amended his application to request that the report for 2 May to 31 October 2000 not be completely removed, but modified by deleting the sentence "Due to an ongoing security investigation, he was unable to obtain the security clearances required to assume his duties." He also dropped his previous request for relief concerning the report for 1 November 2000 to 22 January 2001, and he added a new request for a special selection board (impliedly maintaining his previous implied request to remove his failures of selection for promotion). Because of the failures of selection for promotion, he is scheduled to be involuntarily retired on 1 February 2004. The FY 04 Line Commander Selection Board is to convene on 19 February 2003.

2. The Board, consisting of Messrs. Beckett and Leeman and Ms. Suiter, reviewed Petitioner's allegations of error and injustice on 26 November 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. In his original application, Petitioner contended that despite a good performance record and assignment to a Navy leadership position as an executive officer, he was passed over for promotion to commander because of the extremely prejudicial influence of the two negative fitness reports at issue. He maintained that these reports are in violation of applicable regulations; and that they communicated inappropriate innuendo, making fair evaluation of his suitability for promotion impossible.

c. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has commented to the effect that no relief is warranted concerning the contested fitness report for 1 November 2000 to 22 January 2001, but that the following sentence should be deleted from block 41 of the report for 2 May to 31 October 2000: "Due to an ongoing security investigation, he was unable to obtain the security clearances required to assume his duties."

d. In correspondence attached as enclosure (3), PERS-80, the NPC office having cognizance over active duty promotions, has commented to the effect that they concur with the limited fitness report relief recommended by PERS-311; and that they recommend Petitioner be considered by a special selection board. They stated that after review of his official record and the appropriate promotion selection board records, it was determined that he did have a material error of fact, in that an illegal statement was included in a fitness report. They concluded that this justifies granting Petitioner a special selection board in accordance with criteria specified in Secretary of the Navy Instruction 1401.1B. They further concluded that complete removal of the two contested fitness reports, as Petitioner requested, may create uncertainty about his assignments or expected career path; and that it would create a "hole," and probable speculation by a future promotion selection board.

e. Enclosure (4) is Petitioner's letter in reply to the advisory opinions. He supported the partial relief these opinions recommended, thereby changing his original request to the removal of the illegal reference to the "ongoing security investigation" from the fitness report for 2 May to 31 October 2000 and establishment of a special promotion selection board to re-evaluate his promotion status. He further commented that with his second failure of selection for promotion, he is about 13 months from potential retirement.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of the advisory opinions, the Board finds the existence of an injustice warranting approval of Petitioner's application, except his request for a special selection board. They note that the next regular selection board, the FY 04 Line Commander Selection Board, will convene soon, on 19 February 2003; and they are satisfied that his consideration by the regular selection board, with a corrected fitness report record and status as not having failed

of selection for promotion, will provide him adequate relief. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by deleting the following sentence from block 41 of the fitness report for 7 May to 31 October 2000, dated 25 October 2000 and signed by Commander ██████████ USN, leaving this fitness report, as so modified, in his record:

Due to an ongoing security investigation, he was unable to obtain the security clearances required to assume his duties.

b. That Petitioner's record be corrected further so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

c. That any retirement or other action based in any way on Petitioner's failures of selection before the FY 02 and 03 Line Commander Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.

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.

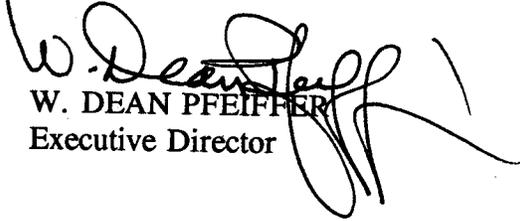
f. That Petitioner's request for a special selection board be denied.

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
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2175-02

1610
PERS-311
22 August 2002

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

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

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness report for the period 2 May 2000 to 31 October 2000 and 1 November 2000 to 22 January 2001.
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. They 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. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the reports to submit a statement.
 - b. The fitness report for the period 2 May 2000 to 31 October 2000 is a Periodic/Regular/Not Observed report and the report for the period 1 November 2000 to 22 January 2001 is a Detachment of Individual/Regular report. The member alleges the reports were extremely prejudicial and placed his suitability for promotion to Commander in doubt.
 - c. A fitness report is unique to the period being evaluated. The reporting senior is charged with commenting on the performance or characteristics of each member under his/her command and determines what material will be included in a fitness report. The report represents the judgment and appraisal authority of the reporting senior.
 - d. Both reports appear to be procedurally correct except for the comment in the report for the period 2 May 2000 to 31 October 2000. Per reference (a), Annex N, paragraph N-14.f, comments concerning an ongoing investigation are prohibited until they are completed.
 - e. While the letter of support included in the member's petition reflects highly on the member's performance, it does not invalidate the fitness report.

- f. Failure of selection is not sufficient reason to remove a fitness report.
- 3. We recommend partial relief. We recommend the following sentence be deleted from the fitness report for the period 2 May 2000 to 31 October 2000:

“Due to an ongoing security investigation, he was unable to obtain the security clearances required to assume his duties.”



Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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2175-02

1420

PERS-80

25 OCT 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LCDR [REDACTED]

Ref: (a) SECNAVINST 1401.1B

Encl: (1) BCNR File 02175-02

1. We are returning enclosure (1) with the following observations and the recommendation that LCDR [REDACTED]'s request, to expunge fitreps and be granted a Special Promotion Selection Board (SSB), be partially approved.

2. After significant review of LCDR [REDACTED]'s official record and review of the appropriate promotion selection board records, I have determined that he did have a material error of fact in which an illegal statement was included in a fitness report.

3. I agree with the partial relief recommended by PERS-311, which corrects inappropriate remarks in a fitness report, however, removal of the two fitness reports may create uncertainty about his assignments or expected career path. If the fitness reports were expunged, it would create a "hole," and probable speculation by a future promotion selection board. Finally, this does justify a Special Promotion Selection Board, in accordance with criteria specified in reference (a).

[REDACTED]