



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

HD:hd
Docket No. 03894-07
16 January 2008

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

REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 12 Apr 07 w/attachments
(2) PERS-311 memo dtd 12 Jun 07
(3) Subject's ltr dtd 7 Dec 07
(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 27 August 2003 to 23 March 2004. A copy of this report is at Tab A.
2. The Board, consisting of Ms. Humberd and Messrs. Boyd and Neuschafer, reviewed Petitioner's allegations of error and injustice on 10 January 2008, 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 the contested adverse report was in reprisal for his having sought better medical treatment for himself and other injured veterans at his station. He provides, with his application at enclosure (1), a supporting statement dated 3 April 2007 from a rear admiral, strongly recommending that the contested report be removed as unjust. The admiral, who says he is "personally aware of the conditions" Petitioner faced at the station that issued the contested report, notes the stark difference between that report and the entirely commendatory report for 16 June 2002 to 15 June 2003 Petitioner received from his previous station. A copy of that report is also with Petitioner's application at enclosure (1).

d. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command office with cognizance over performance evaluations, has commented to the effect Petitioner's request should be denied. PERS-311 notes a performance evaluation report does not have to be consistent with earlier or later reports. PERS-311 acknowledges that Petitioner has provided "impressive letters and certificates" but concludes "nothing has shown the fitness report in question to be in error". Finally, PERS-311 states if Petitioner believed the report at issue was in reprisal, he could have filed a complaint of wrongful treatment. PERS-311 did not expressly address the admiral's statement.

e. In enclosure (3), Petitioner responded to the advisory opinion from PERS-311, stressing the significance of the admiral's statement. Petitioner stated that the Chief of Naval Personnel had sent the admiral to the station that issued the contested report, that the admiral had concluded problems existed there, and that his findings had led to changes in operating procedures there.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the contents of enclosure (2), and especially in light of the admiral's statement, the Board finds 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 of Report	
		From	To
13Apr04	 USNR	27Aug03	23Mar04

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.

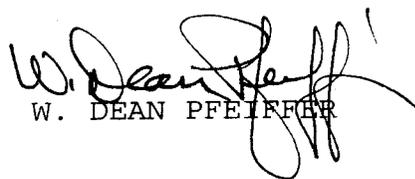
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. 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.

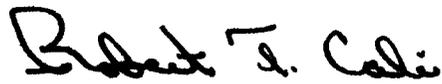
ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


1-25-08