



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

HD:hd
Docket No. 01174-08
8 August 2008

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 31 Jan 08 w/attachments
(2) OPNAV N134 memo dtd 5 May 08
(3) BUPERS-3 ltr dtd 3 Jul 08
(4) PERS-311 memo dtd 18 Jul 08
(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 the fitness reports for 1 February to 10 May 2006 (copy in enclosure (1)), 11 May 2006 to 31 January 2007 (copy at Tab A) and 1 February to 31 July 2007 (copy at Tab B). The Deputy Assistant Secretary of the Navy (Military Personnel Policy) action of 7 March 2008 on Petitioner's complaint of wrongs under Article 138, Uniform Code of Military Justice directed removing the contested report for 1 February to 10 May 2006.

2. The Board, consisting of Ms. Humberd and Messrs. Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 7 August 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. In correspondence attached as enclosures (2), (3) and (4), the Department of the Navy offices having cognizance over the subject matter of Petitioner's case have recommended removing the two remaining reports at issue.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2), (3) and (4), 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 fitness reports and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
31Jan07	[REDACTED] USN	11May06	31Jan07
31Jul07	[REDACTED] SN	1Feb07	31Jul07

b. That there be inserted in Petitioner's naval record ONE memorandum in place of both removed reports containing appropriate identifying data; that the memorandum state that the portion of Petitioner's fitness report record for 11 May 2006 to 31 July 2007 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 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.

d. 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. 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