



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

HD:hd
Docket No. 08467-08
30 July 2009

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 13 Aug 08 w/attachments
(2) PERS-311 memo dtd 17 Oct 08
(3) PERS-811 memo dtd 6 Apr 09
(4) Subject's fax dtd 8 Jun 09 w/enclosures
(5) PERS-811 memo dtd 9 Jul 09
(6) 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 modifying the marks and comments of the enlisted performance evaluation report for 10 July 2005 to 15 March 2006 (copy at Tab A), in accordance with a letter dated 14 August 2008 from the reporting senior (at enclosure (1)) because the report erroneously reflected that he had failed the Spring 2006 physical fitness assessment (PFA) and that this had been his third PFA failure in four years. He further impliedly requested retroactive advancement to BU1 (petty officer first class/pay grade E-6) from cycle 199/March 2008.

2. The Board, consisting of [REDACTED], [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 30 July 2009, 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 enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over performance evaluations, commented to the effect that the contested performance evaluation report should be removed, leaving in Petitioner's record the supplemental report the reporting senior has submitted for the same period. Copies of the supplemental report and the reporting senior's letter of transmittal dated 16 October 2008 forwarding that report, both of which have been filed in Petitioner's record with the contested original report, are at Tab B.

c. In enclosure (3), PERS-811, the NPC office with cognizance over enlisted advancements, indicated additional documentation was needed to determine if Petitioner would have been advanced, had his record reflected the supplemental report rather than the contested original report.

d. Enclosure (4) is the additional documentation Petitioner submitted to assist PERS-811.

e. In enclosure (5), PERS-811 concluded that Petitioner would have been advanced, had his report ending 15 March 2006 been corrected. Accordingly, PERS-811 recommended that his record be corrected to show he was advanced to BU1 with a time in rate date of 1 July 2008 and an effective date of 16 September 2008.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (5), 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 original enlisted performance evaluation report and related material, including the transmittal letter dated 16 October 2008, leaving in the record the supplemental report for the same period:

Date of Report	Reporting Senior	Period of Report	
		From	To
29Mar06	[REDACTED]	10Jul05	15Mar06

b. That appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

c. That Petitioner's record be corrected further by removing any service record page 13 ("Administrative Remarks") or other entry showing he failed the Spring 2006 PFA or that this was his third PFA failure in four years.

d. That his record be corrected further by removing any page 13 or other entry dated on or about 15 March 2006 reflecting the withdrawal of his recommendation for advancement.

e. That his record be corrected further to show he was advanced to BU1 (pay grade E-6) with a time in rate date of 1 July 2008 and an effective date of 16 September 2008.

f. 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.

g. 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
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.



FOR W. DEAN PFEIFFER
Executive Director