



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

HD:hd
Docket No. 00183-08
15 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 4 Jan 07 (sic) w/attachments
(2) OPNAV N135 undtd memo w/enclosures
(3) Subject's fax dtd 4 Jun 08
(4) OPNAV N135 fax dtd 30 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 modifying her Physical Readiness Information System (PRIMS) data to show she did not fail the Fall 2007 physical fitness assessment (PFA), but had a waiver for pregnancy.

2. The Board, consisting of Ms. Humphrey and Messrs. W. Hicks and Swarens, reviewed Petitioner's allegations of error and injustice on 14 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. Enclosure (1) was filed in a timely manner.

c. Petitioner failed both components of the Fall 2007 PFA: she failed the body composition assessment (BCA) conducted on 23 October 2007, and she failed the physical readiness test (PRT), conducted on 2 November 2007. At Tab A to enclosure (1), she provided a pregnancy notification document dated 21 December 2007. In an undated document at Tab B to enclosure (1), the same physician who submitted the pregnancy notification stated Petitioner had become pregnant on 9 July 2007, well before both the BCA and PRT at issue, "but was unaware until the end of November."

d. In correspondence attached as enclosure (2), OPNAV N135, the office within the Office of the Chief of Naval Operations with cognizance over physical readiness, commented to the effect Petitioner's request should be denied, as the pregnancy notification was dated after the PFA in question.

e. In enclosure (3), Petitioner provided a confirmation of pregnancy dated 19 November 2007.

f. In enclosure (4), OPNAV N135 again recommended denying Petitioner's request, as the pregnancy confirmation documentation was dated after the PFA.

g. The PFA failure in question was Petitioner's third in a four-year period. For that reason, she received the adverse special enlisted performance evaluation report for 16 March 2007 to 3 March 2008, a copy of which is at Tab A. It recommended against both advancement and retention.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosures (2) and (4), the Board finds an injustice warranting the requested relief. The Board finds Petitioner was, in fact, pregnant when the PFA in question was conducted, but she was unaware of it until afterward, so the PRIMS should show she had a waiver for pregnancy. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying her PRIMS data for the Fall 2007 PFA to show she did not fail, but had a waiver for pregnancy.

b. That her record be corrected further by removing the following special enlisted performance evaluation report and related material:

| Date of Report | Reporting Senior | Period of Report | |
|----------------|------------------|------------------|----------|
| | | From | To |
| Undated | [REDACTED] | 16 Mar 07 | 3 Mar 08 |

c. That there be inserted in her 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.

d. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

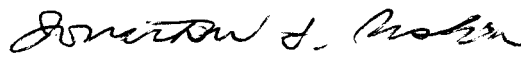
e. That Petitioner's record be corrected further by removing any service record page 13 ("Administrative Remarks") or other entry dated on or about 23 October 2007, 2 November 2007, or 3 March 2008, reflecting her third PFA failure in a four-year period, withdrawal of her recommendation for advancement, or withdrawal of her recommendation for retention.

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.

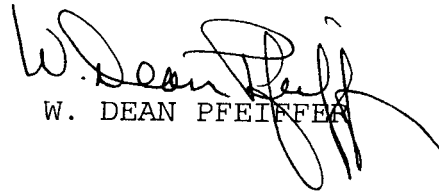
g. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

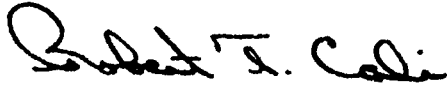
ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


8-26-08

Robert T. Cali
Assistant General Counsel
(Manpower and Reserve Affairs)