



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

JSR
Docket No: 590-09
16 April 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 18 Jun 08 w/attachments
(2) HQMC MMER/PERB memo dtd 21 Jan 09
(3) HQMC MIO memo dtd 12 Feb 09
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 11 May to 3 August 2007 and the service record page 11 ("Administrative Remarks (1070)") counseling entry dated 10 August 2007 with Petitioner's rebuttal dated 16 August 2007, copies of which are at Tabs A and B, respectively.

2. The Board, consisting of Ms. LeBlanc and Messrs. Bourgeois and Sproul, reviewed Petitioner's allegations of error and injustice on 16 April 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. The contested fitness report, from the Officer Candidates School, reflects that Petitioner was relieved of his duties as a platoon sergeant because a preliminary inquiry (PI) concluded that he had conducted himself inappropriately with a female officer candidate. The contested page 11 counseling entry (cited in the fitness report and elsewhere as a "6105 entry" because of its reference to paragraph 6105 of the Marine Corps Separation and Retirement Manual) was based on the results of the PI. The redacted copy of the PI report at Petitioner's enclosure (7) to his application concludes "It is my belief that [Petitioner] inappropriately singled --- out from the rest of 1st Platoon, and as a result created an environment in which --- perceived him as a threat." Petitioner provides e-mail from his platoon commander/reporting senior, at enclosure (9) to his application, stating "there was no reason to enter a 6105 entry without further investigation."

d. Enclosure (2), the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case, concluded that his request to remove the contested fitness should be denied. The PERB stated, in paragraph 3.d, that the PI disclosed "no conclusive evidence proving that the petitioner acted inappropriately" but the investigating officer "conducted a thorough investigation and made the determination that [Petitioner] did indeed act inappropriately and that the candidate's claims had merit."

e. In enclosure (3), the HQMC Manpower Information Operations, Manpower Management Information Systems Division commented to the effect that the contested page 11 entry should stand as well.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosures (2) and (3), and especially in light of the e-mail from the platoon commander/reporting senior, the Board finds an injustice warranting full relief. The Board considers that the serious and possibly career-ending actions at issue should not have been taken without further investigation beyond the PI, particularly when, as acknowledged by the PERB, the PI had found no conclusive evidence that Petitioner had acted inappropriately. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following fitness report and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
16 Aug 07	[REDACTED]	USMC 11 May 07	3 Aug 07

b. That there be inserted in his 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 the magnetic tape maintained by HQMC be corrected accordingly.

d. That Petitioner's record be corrected further by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 10 August 2007 and his rebuttal dated 16 August 2007. This is to be accomplished by physically removing the page 11 on which the entry appears and the rebuttal, or completely obliterating the entry and rebuttal so they cannot be read, rather than merely lining through the entry and rebuttal.

e. 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 be added to the record in the future.

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

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

Robert T. Cole
5-11-09