



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

HD:hd
Docket No. 02657-09
22 January 2010

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 12 Mar 09 w/attachments
(2) PERS-832B memo dtd 27 Apr 09
(3) PERS-32 memo dtd 11 May 09

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, from block 41 ("Comments on Performance") of the fitness report for 16 September 2006 to 15 September 2007 (copy at Tab A), "-Although a model member of the Chief's Mess, he admitted to improperly consuming alcohol onboard TAYLOR following the final inspection for the NEY Award." and removing, from block 41 of the "not observed" report for 16 September to 25 November 2007 (copy at Tab B), "-[Petitioner] was awarded Commanding Officer's NJP [nonjudicial punishment] on 13 NOV 2007 for violation of Article 92 and U.S. Navy Regulations Article 1162 and subsequently issued a Punitive Letter of Reprimand." Finally, Petitioner requested removing any other reference to the incident cited in the contested reports. His Official Military Personnel File reflects no other reference to this incident.

2. The Board, consisting of Ms. Ballinger and Messrs. W. Hicks and Swarens, reviewed Petitioner's allegations of error and injustice on 22 January 2010, 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, 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 enclosures (2) and (3), the Navy Personnel Command (NPC) offices with cognizance over the subject matter of Petitioner's case have commented to the effect that the request has merit and warrants partial relief, specifically, complete removal of the report for 16 September to 25 November 2007. Enclosure (3) notes that "not observed" fitness reports may not include adverse comments.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds an error warranting partial relief, specifically, the requested modification of the report for 16 September to 25 November 2007. The Board agrees with enclosure (3) in finding this "not observed" report should not have included adverse comments, but finds the more appropriate remedial action is removing those comments, as Petitioner requested, rather than completely removing the report, which could engender speculation about its content. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying the fitness report for 16 September to 25 November 2007, dated 10 June 2008 and signed [REDACTED] USN, by removing the following from block 41:

- [Petitioner] was awarded Commanding Officer's NJP on 13 NOV 2007 for violation of Article 92 and U.S. Navy Regulations Article 1162 and subsequently issued a Punitive Letter of Reprimand.

b. 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.

c. 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.

d. That the remainder of Petitioner's request be denied.

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.

W. Dean Pfeiffer
W. DEAN PFEIFFER
Executive Director