

c. Petitioner was recommended for detachment for cause (DFC) on the basis of a command investigation dated 1 May 2008 into the circumstances surrounding the over-obligation of TADTAR funds during Fiscal Year 2008. In his third endorsement of 23 September 2008 on Petitioner's statement regarding the DFC, the Commander, Carrier Strike Group EIGHT stated this investigation "was plagued by violations of law and regulation which substantially and materially prejudiced the rights of [Petitioner] and others." On 30 December 2008, the DFC was disapproved, and Petitioner was detached from his parent command, USS LABOON (DDG-58), but not for cause.

d. The contested fitness report shows Petitioner was the executive officer (XO) aboard LABOON from the beginning of the reporting period to 29 May 2008, when he began temporary additional duty (TAD) with the Commander, Destroyer Squadron TWO EIGHT. It is not adverse, making no reference to the investigation or request for DFC, but marks Petitioner "promotable" (third best of five possible marks) in block 42 ("Promotion Recommendation - Individual"), with no peer comparison, and assigns him marks of "3.0" (third best of five possible marks) in six of seven areas ("4.0" (second best) in the other). Block 41 ("Comments on Performance") says he is a "good officer" whose performance as XO was "solid." Petitioner submitted a statement to the report, indicating he felt his performance as XO rated a better appraisal. The reporting senior's endorsement on Petitioner's statement merely said "Forwarded."

e. In enclosure (3), PERS-32, the Navy Personnel Command (NPC) office with cognizance over the subject matter of the case, commented to the effect Petitioner's request should be denied. PERS-32 noted that Petitioner's TAD unit was not authorized to submit a concurrent fitness report, but was permitted to provide input for his regular report.

f. Enclosure (4) is Petitioner's reply to the NPC advisory opinion. He contended that his having received no fitness report from the command to which he was assigned TAD for eight of the 13 months covered by the contested fitness report (as extended to his detachment on 24 January 2009) unfairly disadvantaged him. He argues that had he been properly advised of the regulations and implications of remaining attached to Commander, Destroyer Squadron TWO EIGHT, he could have sought transfer.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (3), the Board finds an injustice warranting complete removal of the fitness report in question. Particularly noting that the report, while not adverse, reflects a far less than enthusiastic endorsement, the Board believes it was tainted by the unsuccessful effort to detach Petitioner for cause, which had been based on a command investigation found to be seriously flawed. Accordingly, the Board recommends the following corrective action:

RECOMMENDATION:

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

Date of Report	Reporting Senior	Period of Report	
		From	To
21Nov08	 USN	18Dec07	31Oct08

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the 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 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
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. Celi
6-12-09