



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

HD:hd
Docket No. 03437-10
28 January 2011

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 17 Mar 09 (sic) w/attachments
(2) PERS-32 memo dtd 29 Apr 10

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 the original fitness report for 1 February to 30 December 2008, together with a letter of transmittal forwarding a supplemental report for the same period, so that the supplemental report will be the only report in his record for this period. Copies of the original report, the letter of transmittal and the supplemental report are at Tabs A, B, and C, respectively.
2. The Board, consisting of Messrs. Geberth, Pfeiffer and Silberman, reviewed Petitioner's allegations of error and injustice on 26 January 2011, 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. Enclosure (1) was filed in a timely manner.
 - c. Both the original and supplemental reports rated Petitioner "Early Promote" (best of five possible promotion recommendations),

but the supplemental report raised two of the marks assigned (block 33 ("Professional Expertise") from "3.0" (third best of five possible marks) to "5.0" (best) and block 35 ("Military Bearing/Character") from "3.0" to "4.0" (second best)).

d. In the letter of transmittal, submitted on 4 December 2009, the reporting senior stated that the supplemental report was submitted "due to reserve administrative oversight which gave the member an incorrect trait average." With his application, Petitioner provided a letter dated 20 January 2010 from the Vice Chief of Information, a rear admiral, explaining that the draft of Petitioner's fitness report, which had been submitted by the Reserve Component (RC) Director, "was significantly changed without consultation with the RC Director, or with considering past evaluations and the cumulative average" and that "The reasons for these changes appear to be errors in administrative processing between staffs." He added that "This oversight was compounded when the report was submitted to BUPERS [Bureau of Naval Personnel] without a final review by either the AD [Active Component] Director [reporting senior], the RC Director or a debrief to the officer." He stated that the contested original report "is sufficiently derogatory to impact future selection boards" and requested its removal from Petitioner's record.

e. In enclosure (2), the Navy Personnel Command office with cognizance over the subject matter of this case has commented to the effect the request should be denied, as Petitioner does not prove the original report to be in error, and the reporting senior has corrected his record administratively by having the supplemental material filed with the original report. This advisory opinion did not address the rear admiral's letter.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds the existence of an error and injustice warranting the requested relief. In this regard, the Board particularly notes the rear admiral's letter. The Board agrees with him that leaving the original report in Petitioner's record could harm his naval career. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following original fitness report and related material, including the transmittal letter dated 4 December 2009,

leaving in the record the supplemental report covering the same period:

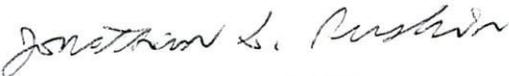
Date of Report	Reporting Senior	Period of Report	
		From	To
30Dec08		1Feb08	30Dec08

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.

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
Executive Director

Reviewed and approved:

 2/24/11

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000