



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

HD:hd

Docket No. 07700-10

22 October 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 10 Jul 10 w/attachments
(2) PERS-833 memo dtd 20 Aug 10 w/enclosures
(3) Subject's ltr dtd 20 Sep 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 all documentation of his removal from the Fiscal Year (FY) 09 Active Duty Navy Lieutenant All-Fully-Qualified-Officers List (AFQOL), a copy of which is at Tab A. He also requested removing the Naval Inspector General (NAVIG) report of investigation of which he was the subject dated 16 November 2007, a copy of which is at enclosure (1) to his application (the report is not on file in his naval record). He impliedly requested that his removal from the FY 09 AFQOL be set aside and that his failure of selection to lieutenant as a result of that removal be stricken.

2. The Board, consisting of Mses [REDACTED] and [REDACTED] reviewed [REDACTED] allegations of error and injustice on 21 October 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. Enclosure (1) was filed in a timely manner.

c. The contested NAVIG report substantiated charges against Petitioner of sexual harassment and hostile work environment. The Chief of Naval Operations (CNO) memorandum for the Secretary of the Navy (SECNAV) dated 24 March 2010, a copy of which is at Tab A, noted that Petitioner's commanding officer (CO) strongly urged his promotion, in spite of the NAVIG report. The CNO summarized the CO's position as follows:

[The CO] forwards his highest personnel recommendation for [Petitioner's] promotion. The investigation raises questions to the thoroughness and due process provided [Petitioner]. The evidence supporting the substantiated allegation is at best sparse. [Petitioner] was not provided the full results of the investigation. Denying the promotion of an officer of this high quality on such a weak basis does a disservice to both the officer and the Navy.

Notwithstanding the CO's support for Petitioner's promotion, the CNO recommended that he be removed from the AFQOL for the following reasons:

[Petitioner's] actions represent a significant departure from the expected standards of conduct. When confronted with indications that his leadership style necessitated re-examination, [Petitioner] ignored the warning signs. The result as substantiated by the [NAVIG] was a hostile work environment. I do not have the requisite trust and confidence to recommend this officer for promotion.

As also shown at Tab A, on 4 May 2010, SECNAV approved the CNO recommendation to remove Petitioner from the AFQOL.

d. Had Petitioner not been removed from the AFQOL, and had he been promoted to lieutenant, he would have been assigned a date of rank and effective date of 1 September 2009. He is on the FY 11 AFQOL.

e. Petitioner fully concurs with his CO's position, contending that the NAVIG report left out material information, and he totally disagrees with the CNO's basis for recommending his removal from the AFQOL.

f. In enclosure (2), the Navy Personnel Command office with cognizance over the subject matter of this case commented to the

effect relief should be denied. Enclosure (3) is Petitioner's rebuttal to the advisory opinion.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the advisory opinion at enclosure (2), the Board finds an injustice warranting approval of Petitioner's application, except his request to remove the NAVIG report.

The CO's basis for supporting Petitioner's promotion, which did not persuade the CNO or SECNAV, does persuade the Board that he should not have been removed from the AFQOL. While the Board recognizes there are reasons to doubt the findings of the NAVIG report, it is not convinced that the report is flawed to the extent it should be removed, noting that it does not appear in Petitioner's own record.

In view of the above, the Board recommends the following limited corrective action:

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show he was not removed from the FY 09 Active Duty Lieutenant AFQOL.
- b. That his record be corrected further by removing all documentation of or relating to his removal from the FY 09 Active Duty Lieutenant AFQOL.
- c. That his record be corrected further by removing his failure of selection to lieutenant as a result of his removal from the FY 09 Active Duty Lieutenant AFQOL.
- d. If Petitioner is found qualified in all respects, that he be promoted to lieutenant with a date of rank and effective date of 1 September 2009.
- e. That any material or entries 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.
- 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.

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

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved: