



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

BJG
Docket No: 8103-10
14 September 2010

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 dtd 31 Jan 09 (sic) w/attachments
(2) HQMC MMER/PERB memo dtd 27 Jul 10
(3) 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 the fitness report for 1 November 2007 to 15 September 2008 (copy at Tab A) be modified by raising the marks in sections D.1 ("Performance"), D.2 ("Proficiency") and F.5 ("Communication Skills") from "D" (fourth best of seven possible marks) to "E" (third best) and F.4 ("Ensuring Well-being of Subordinates") from "C" (fifth best) to "D"; and removing, from section K.4 (reviewing officer (RO) comments), "I rank him 3 of 3 compared to other Warrant Officers at MVSD [Mojave Viper Support Detachment]." As shown in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed raising the marks as Petitioner requested.

2. The Board, consisting of Messrs. Neuschafer, Washington and Zsalman, reviewed Petitioner's allegations of error and injustice on 8 September 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, 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. Section K.3 (RO's "Comparative Assessment") of the fitness report in question shows only zeroes, indicating that the RO did not rank any of Petitioner's peers.

d. Petitioner did not explain his basis for requesting removal of the RO comment. In enclosure (2), the HQMC PERB commented to the effect that this request should be denied, as the Performance Evaluation System (PES) does not prohibit ranking comments, the contested comment does not fall within the PES guidelines for adverse comments, and the PERB found nothing inherently negative about the comment at issue.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an injustice warranting removal of the contested RO comment. The Board finds this comment objectionable because it is gratuitous, section K.3 reflects the RO did not rank the other two warrant officers to whom he refers, and those officers could have been in grades above Petitioner's grade of chief warrant officer 2. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying as follows the fitness report for 1 November 2007 to 15 September 2008, dated 9 October 2008 and signed by [REDACTED]

Section K.4: Remove "I rank him 3 of 3 compared to the other Warrant Officers at MVSD."

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 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

Reviewed and approved:

 10/1/10

ROBERT L. WOODS
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