



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

JSR
Docket No. 09822-10
27 October 2010

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 dtd 17 Mar 10 w/atchs, incl
Subject's ltr dtd 7 Jun 10 w/encl (IGMC rept)
(2) HQMC MMR/PERB memo dtd 27 Aug 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 applicable naval record be corrected by removing therefrom the fitness report for 1 July 2007 to 1 May 2008. A copy of this report is at Tab A
2. The Board, consisting of Ms. Siler and Messrs. Clemmons and Rothlein, reviewed Petitioner's allegations of error and injustice on 27 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, 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. Petitioner contends that the contested fitness report, which includes nothing derogatory, should be completely removed, because the reviewing officer (RO), a colonel who was

Petitioner's commanding officer, was biased against him; and the reporting senior (RS), a lieutenant colonel who was the executive officer, did not establish what he expected of Petitioner, nor did he provide performance guidance. Petitioner further asserted that after having previously supported his handling of two incidents, the RS told him "if I had handled [the] incidents at my level before they had reached the command's attention then I might have fared better on my fitness report."

d. Enclosure (2) is the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case. The report reflects that the PERB has directed partial relief, specifically, modification of the contested fitness report by removal of the entire section K (RO marks and comments). The PERB took this action because Petitioner "submitted compelling evidence to indicate that the RO's evaluation may have been biased and possibly influenced by factors other than the petitioner's performance." The PERB denied Petitioner's request to remove the entire report, because it found the RS had provided him performance counseling, the RS's marks and comments did not indicate any bias or unfairness, and Petitioner had "failed to sufficiently establish his claim that the RS' part of the report is not an accurate evaluation of his performance."

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds an injustice warranting removal of the contested fitness report, as it has been modified. The Board finds the RO's bias against Petitioner undoubtedly adversely influenced the RS's opinion of him. Accordingly, the Board recommends the following corrective action:

RECOMMENDATION:

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

Date of Report	Reporting Senior	Period of Report	
		From	To
26 Apr 08		1 Jul 07	1 May 08

b. That there be inserted in his naval record a memorandum in place of the removed report, containing appropriate

identifying data concerning the report; that such 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 the magnetic tape maintained by HQMC be corrected accordingly.

d. 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.

e. That any material directed to be removed from Petitioner's naval record be returned to this 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:



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

11/02/10