



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

HD:hd  
Docket No. 12173-10  
9 June 2011

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

Subj: LCDR [REDACTED] USN [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 27 Oct 10 w/attachments  
(2) PERS-834 ltr dtd 29 Dec 10  
(3) Subject's ltr dtd 31 Jan 11  
(4) PERS-834 ltr dtd 25 Apr 11  
(5) Subject's ltr dtd 17 May 11

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 detachment for cause (DFC) from duty as Commanding Officer, Mine Countermeasures Crew PERSISTENT, requested by the Commander, Mine Countermeasures Squadron TWO letter of 3 March 2009 and approved by the Commander, Navy Personnel Command (NPC) letter of 9 September 2009. A copy of the DFC documentation is at Tab A.

2. The Board, consisting of Messrs. Dixit, McBride and Vogt, considered Petitioner's application on 3 March 2011 and requested that a second advisory opinion be obtained from NPC. A second panel, consisting of Ms. Trucco and Messrs. Grover and Sproul, reviewed Petitioner's allegations of error and injustice on 9 June 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 second panel of 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. In enclosure (2), PERS-834, the NPC office with cognizance over the subject matter of this case, commented to the effect that Petitioner's request should be denied, but did not address the Commander, Mine Countermeasures Squadron TWO letter of 7 October 2010 Petitioner had provided, which stated that it had come to his attention that many significant issues that led to poor performance on Petitioner's ship's inspection were "endemic to the ship class," that he recommended vacating the DFC, and that "if faced with the same scenario now, I probably would not relieve the Commanding Officer without further cause."

c. Enclosure (3) is Petitioner's response to enclosure (2).

d. In response to the Board's request for a second advisory opinion addressing the Commander, Mine Countermeasure Squadron TWO letter of 7 October 2010, PERS-834 provided enclosure (4), commenting as follows:

If poor material condition, that could not have been rectified in the 22 months [Petitioner] was onboard, is the primary cause of the [inspection] failure and not a result of poor leadership, the DFC should be vacated. However if poor leadership, as stated in the original request for DFC, over the 22 months he was attached to the ship was the primary cause, the DFC should remain as part of his record.

e. Enclosure (5) is Petitioner's response to enclosure (4).

f. Petitioner's record includes an adverse fitness report for 20 December 2008 to 31 March 2009 (copy at Tab B) and the Commander, NPC letter dated 17 September 2009, Subject: Status in the U.S. Navy (copy at Tab C), both of which are based on the contested DFC.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the Commander, Mine Countermeasures Squadron TWO letter, the Board finds an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the Commander, Mine Countermeasures Squadron TWO letter of 3 March 2009 requesting Petitioner's DFC from duty as Commanding Officer, Mine Countermeasures Crew PERSISTENT and related material, to include the following:

- (1) Petitioner's first endorsement dated 3 March 2009.
- (2) Petitioner's statement dated 20 March 2009.
- (3) First endorsement on Petitioner's statement dated 26 August 2009.
- (4) Second endorsement on Petitioner's statement dated 16 April 2009.
- (5) Third endorsement on request for DFC dated 8 September 2009.
- (6) Commander, NPC letter dated 9 September 2009.

b. That his record be corrected further by removing all documentation based on the DFC, to include the following:

- (1) Fitness report for 20 December 2008 to 31 May 2009, submitted by [REDACTED] USN and dated 2 April 2009 and related material, including Petitioner's statement for the record dated 10 January 2010, the reporting senior's first endorsement dated 15 January 2010 and the reporting senior's fitness report letter-supplement dated 6 August 2010.
- (2) Commander, NPC (PERS-83) letter dated 17 September 2009, Subject: Status in the U.S. Navy.

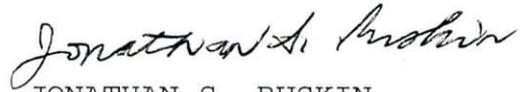
c. That there be inserted in Petitioner's naval record a memorandum in place of the fitness report to be removed containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions 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.

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 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. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
FOR W. DEAN PFEIFFER  
Executive Director