



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

JSR
Docket No. 378-11
18 August 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 13 Sep 10 w/attachments
(2) HQMC MMER/PERB memo dtd 30 Dec 10
(3) Subject's ltr dtd 24 Jan 11 w/enclosures
(4) HQMC MMER/PERB memo dtd 15 Jun 11
(5) HQMC RCT memo dtd 17 Feb 10 (sic)
(6) Subject's naval record

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 fitness report for 16 December 2009 to 30 June 2010, a copy of which is at Tab A. She also impliedly requested removing her failure of selection by the Fiscal Year 2012 Reserve Colonel Selection Board, so as to be considered by the selection board next convened to consider officers of her category for promotion to colonel as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Messrs. W. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 18 August 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, 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 available under existing law and regulations within the Department of the Navy.

b. Enclosure (2) is the first of two reports of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case. This report reflects that the PERB commented to the effect that her request to remove the contested fitness report should be denied, but the PERB directed that the report be modified by removing, from section I (reporting senior's "Directed and Additional Comments"), "Sect[ion] A, Item 8.c: Joined command with insufficient time to take the CFT [Combat Fitness Test] prior to the end of the CFT period."

c. Enclosure (3) is Petitioner's rebuttal to the first PERB report, objecting that the reporting senior held the same grade as she did, but section K.4 (reviewing officer's comments) lacked the required comment authorizing the reporting senior to act in that capacity.

d. Enclosure (4) is the second PERB report, which comments to the effect that Petitioner's rebuttal does not support removing the contested fitness report.

e. In enclosure (5), the HQMC office with cognizance over the subject matter of Petitioner's implied request to remove her failure of selection for promotion commented to the effect that this request should be approved in light of the PERB action to modify the contested fitness report. That office also recommended granting Petitioner consideration by a special selection board, but she did not request this.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2), (4) and (5), the Board finds the existence of an injustice warranting partial relief, specifically, removal of Petitioner's failure of selection for promotion. The Board finds it a harmless error that section K.4 of the contested fitness report lacked the required comment. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected so that she will be considered by the earliest possible selection board convened to consider officers of her category for promotion to colonel as an officer who has not failed of selection for promotion to that grade.

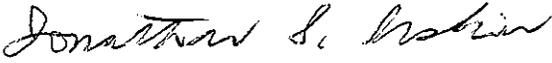
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.


W. DEAN PFEIFFER
Executive Director