



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

JSR

Docket No. 3443-12

18 October 2012

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD (PARTIAL RECONSIDERATION)

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

Encl: (1) DD Form 149 dtd 15 Mar 12 w/attachments
(2) BCNR file, docket no 1582-11
(3) HQMC MMER/PERB memo dtd 27 Aug 12
(4) Subject's ltr dtd 10 Oct 12 w/enclosure
(5) HQMC MMSB-50 memo dtd 7 Sep 12
(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 completely removing the fitness report for 18 June 2007 to 31 May 2008 (copy at Tab A), modified in his previous case by the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) by removal of section K (reviewing officer (RO) marks and comments). As shown in enclosure (2), the file on his previous case, on 10 March 2011, the Board denied this request. He also made new requests to modify the fitness report for 29 March 2010 to 15 July 2011 (copy at Tab B), by removing section K, and remove his failure of selection by the Fiscal Year 2013 Major Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade. As shown in enclosure (3), the PERB has directed the requested modification of the report for 29 March 2010 to 15 July 2011.

2. The Board, consisting of Ms. Countryman and Messrs. Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 18 October 2012, 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. In enclosure (3), PERB has commented to the effect that the fitness report for 18 June 2007 to 31 May 2008 should stand, but that the report for 29 March 2010 to 15 July 2011 should be modified as Petitioner requested.

c. Petitioner contends that the contested fitness report for 18 June 2007 to 31 May 2008 was in reprisal for his complaints, to both the reporting senior (RS) and the chain of command, of questionable conduct by the RS. In enclosure (4), his reply to the PERB report, he says "I believe it is unreasonable to believe that the RS would have marked me objectively in the RS portion, while making harmful recommended comments for the RO - comments that have since been expunged."

d. In enclosure (5), the HQMC office with cognizance over the subject matter of Petitioner's request to remove his failure of selection for promotion has commented to the effect that in light of the fitness report modification directed by PERB, this request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (5), the Board finds the existence of an injustice warranting partial relief, specifically, removal of Petitioner's failure of selection to major. In finding that the contested fitness report for 18 June 2007 to 31 May 2008 should stand, the Board is unable to find that this report was in reprisal for Petitioner's complaints against the RS, nor can the Board find that the RS authored the comments in the removed section K of this report. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major 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