



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

HD:hd
Docket No. 04918-12
26 September 2012

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 25 Apr 12 w/attachments
(2) PERS-32 memo dtd 31 May 12

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 modifying the enlisted performance evaluation report for 16 November 2009 to 15 November 2010 (copy at Tab A) to show the mark in block 45 ("Promotion Recommendation - Individual") as "Must Promote" (second best of five possible marks), rather than "Promotable" (third best).
2. The Board, consisting of Ms. Countryman and Messrs. Dikeman and Tew, reviewed Petitioner's allegations of error and injustice on 20 September 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 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 (1) was filed in a timely manner.
 - c. With his application at enclosure (1), Petitioner provided a copy of his evaluation for the period in question that is identical to the contested report of record for that period, except that the

mark in block 45 is "Must Promote" rather than "Promotable," as it is in the report of record; and the peer distribution in block 46 ("Promotion Recommendation - Summary") is 16 "Promotable," 16 "Must Promote" (including Petitioner) and nine "Early Promote" (best possible mark), for a total of 41, whereas the report of record shows 18 "Promotable" (including Petitioner), 18 "Must Promote" and nine "Early Promote," for a total of 45. Both reports show the reporting senior and Petitioner signed on 19 November 2010.

d. Petitioner states that on 10 January 2011, at a new duty station, he noticed that his mark in block 45 had been changed without his knowledge, over his signature.

e. In enclosure (2), the Navy Personnel Command (NPC) office with cognizance over the subject matter of Petitioner's case has commented to the effect that his request should be denied, as the evaluation of a "member's standing within a summary group, and corresponding promotion recommendation that is limited by forced distribution guidelines, are all responsibilities of the reporting senior." That office stated that "The rater responded that a change was done but has provided no documentation to that as of the date of this correspondence."

f. In accordance with Bureau of Naval Personnel Instruction 1610.10B, enclosure (2), guidance concerning block 45, in a peer group of 45, the maximum number to be marked "Early Promote" is nine, and the maximum for "Must Promote" is 18.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an error and injustice warranting the requested relief. The Board finds Petitioner's mark in block 45 was downgraded without his knowledge, and over his signature. While the Board recognizes the reporting senior had the discretion to change the mark before submitting the report for file in Petitioner's record, the Board objects to lowering such an important mark without advising Petitioner of the change, denying him an opportunity to contest that change before the report's submission, and falsely making it appear he was aware of the change. The Board further recognizes that the reporting senior has reached the maximum number for "Must Promote," 18, without including Petitioner. However, the Board considers it best not to change the peer distribution by raising the number for "Must Promote" to 19, as this would violate the applicable instruction. The Board is not troubled that leaving the peer distribution as is, while raising Petitioner's mark in block 45, would suggest that someone else was

downgraded from "Must Promote" to "Promotable." 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 enlisted performance evaluation report for 16 November 2009 to 15 November 2010, dated 19 November 2010 and signed by

[REDACTED]

Block 45: Change from "Promotable" to "Must Promote."

b. That appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

c. 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.

d. 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
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

Robert L. Woods
ROBERT L. WOODS
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10/31/12