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

BJG  
Docket No: 9493-12  
5 February 2013

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 24 May 12 w/attachments  
(2) HQMC MMR/PERB memo dtd 7 Sep 12  
(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 his naval record be corrected by modifying the fitness report for 1 June to 7 October 2011 (copy at Tab A), to make it "not observed," or removing the report.

2. The Board, consisting of Messrs. Dixit, Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 31 January 2013, 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 fitness report in question should have been "not observed," as there was not enough observation time. As proof, he provided his chronological record and documentation of his having been sent TAD (temporary

additional duty) for two weeks. He considers the report in question the worst of his career.

d. The contested report has marks of "B" (second lowest of seven possible) and "C" (third lowest), and section K.3 (reviewing officer (RO) "Comparative Assessment") is marked third lowest of eight possible marks. The narrative provided by both the reporting senior (RS) and RO is fully favorable and substantive.

e. Enclosure (2), the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board in Petitioner's case, stated that his request was denied because the comments of the RS and RO "clearly speak to the reporting officials' substantial and meaningful observations."

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an injustice warranting removal of the contested report. In light of the information Petitioner has provided, the Board seriously questions that the reporting officials had adequate opportunity to observe his performance. However, the Board is reluctant to change the report to "not observed" over the signatures of the reporting officials who intended for the report to be observed. In view of the above, 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 Rept	Reporting Senior	Period of Rept	
		From	To
5 Oct 11		1 Jun 11	7 Oct 11

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 be added to the record in the future.

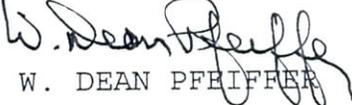
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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

  
W. DEAN PFEIFFER

Reviewed and approved:

3/8/13

*I concur with the Board's recommendation.*



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