



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

HD
Docket No. NR7175-13
24 April 2014

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 12 Feb 13 w/attachments
(2) PERS-32 memo dtd 29 Nov 13
(3) PERS-00J ltr dtd 16 Jan 14
(4) Subject's ltr dtd 18 Mar 14 w/enclosures

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 removal of the enlisted performance evaluation report for 16 September 2011 to 22 February 2012 (copy at Tab A) and advancement to LSC (pay grade E-7) retroactive to August 2012.

2. The Board, consisting of Messrs. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 24 April 2014, 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. Petitioner was selected for advancement to LSC from Cycle 210 and she was frocked, with a projected time in rate date of 1 September 2011 and effective date of 16 August 2012 (dates provided by Navy Personnel Command (NPC), PERS-812).

d. The contested performance evaluation report, submitted by Petitioner's commanding officer (CO) on 22 February 2012, withdrew her recommendation for advancement. Block 43 ("Comments on Performance") stated her "actions prior to her frocking, lack of initiative and inability to grasp the responsibility required of a CPO [chief petty officer] clearly exhibit her unpreparedness to effectively serve as an E-7." On the basis of the CO's withdrawal of her recommendation for advancement, she was not advanced.

e. On 13 January 2012, Petitioner submitted a complaint of wrongs under Article 138, Uniform Code of Military Justice, against her CO, alleging he wrongfully removed her frocking authorization. In subsequent addendums, she alleged that her performance evaluation report marks were wrongfully lowered and her advancement recommendation wrongfully withdrawn. On 1 November 2012, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) upheld the decision of the General Court-Martial Convening Authority (GCMA), Commander, Naval Air Force Atlantic, to deny relief.

f. On 23 January 2011, an LS1 Y---, who belonged to the same command as Petitioner, was arrested for driving under the influence of alcohol (she was ultimately convicted). Petitioner was a passenger in her own vehicle, with LS1 Y--- as the designated driver, when the incident occurred. Petitioner notified a senior member of her command, SHCM (pay grade E-9) W---, of the incident. On 14 October 2011, she appeared before her CO at "Captain's Counseling." The GCMA (letter dated 23 April 2012) found that Petitioner failed to report her shipmate's incident, and that she exhibited a "complete lack of decorum and military bearing while being counseled by [her CO]."

g. Petitioner contends that the evaluation at issue, the removal of her frocking authorization and the withdrawal of her recommendation for advancement were unjust and unwarranted, as she did notify SHCM W--- of the incident involving LS1 Y---, and she was not disrespectful to her CO at the "Captain's Counseling."

h. At enclosures (2) and (3), the NPC offices with cognizance over the subject matter of Petitioner's case have commented to the effect that her request should be denied.

i. With enclosure (4), Petitioner's reply to the advisory opinions, she provided a statement dated 3 March 2014 from the command chaplain who was present at the "Captain's Counseling." He stated that the CO felt reporting the incident to SHCM W--- "wasn't enough." He further stated that "At absolutely no point did [Petitioner] disrespect [her CO]." He concluded by stating "It is unfortunate that [Petitioner's] career has been ruined because of another Sailor's lapse in judgment."

j. Petitioner also alleges that she was the victim of reprisal for protected communications, specifically, her complaint of wrongs and a complaint that she had been the victim of a sexual attack. The Commander, U. S. Fleet Forces Command Inspector General (IG) conducted a preliminary inquiry (PI) that determined further investigation was not warranted. The Naval Inspector General agreed and forwarded the PI to the office of the Department of Defense IG, which concurred with the findings of the PI.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosures (2) and (3), and especially in light of the chaplain's statement at enclosure (4), the Board finds an injustice warranting the requested relief. In this regard, the Board finds that Petitioner did report the incident involving LS1 Y--- to a senior member of her command, and it further finds she was not disrespectful to her CO at the "Captain's Counseling." 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 enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
22 Feb 12		16 Sep 11	22 Feb 12

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the 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 appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

d. That Petitioner's record be corrected further by removing any service record page 13 ("Administrative Remarks") or other entry dated on or about 22 February 2012 withdrawing her recommendation for advancement.

e. That her record be corrected further to show she was advanced to LSC with a time in rate date of 1 September 2011 and effective date of 16 August 2012.

f. That any material or entries 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.

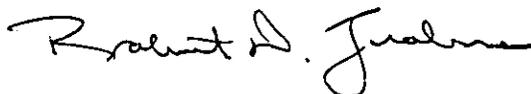
g. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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

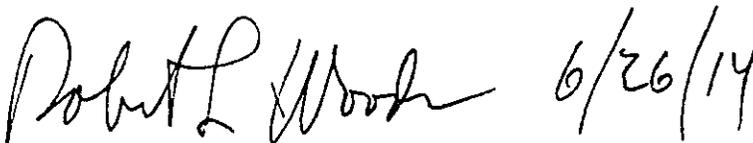

JONATHAN S. RUSKIN
Acting Recorder

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



ROBERT D. ZSALMAN
Acting

RJW Reviewed and ~~approved~~: disapproved. See attached decisional memorandum.



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DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
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June 24, 2014

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

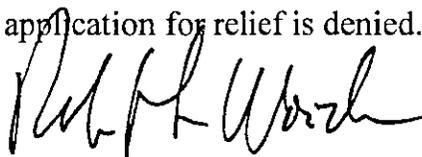
Subj: BCNR PETITION OF [REDACTED]

The subject petition was forwarded to me pursuant to the provisions of the SECNAVINST 5420.193, Section 6.e.(1)(a) because the Board's recommendation is inconsistent with the advisory opinion provided by the NPC offices at enclosures 2 and 3 of the Board's record in this petition. Further, the Secretary has delegated authority to me to render decisions in such cases. Pursuant to this authority, the recommendation of the Board for Correction of Naval Records to grant the Petitioner's request for relief is disapproved. I have considered the Petitioner's case under the provisions of 10 U.S.C. § 1552 and determined that she is not entitled to have her record corrected to remove her detachment evaluation report covering the period of September 16, 2011, to February 22, 2012; to be advanced to LSC (E-7) with a time in rate date of September 1, 2011, and an effective date of August 16, 2012; or to be provided any other relief.

The Petitioner was selected for advancement and frocked to LSC. On January 23, 2011, while stationed aboard the USS THEODORE ROOSEVELT, the Petitioner was a passenger in her own car when an LS1 was arrested for driving the car while under the influence of alcohol. The LS1 was driving Petitioner's car because the Petitioner believed she had drunk too much herself to drive. The Petitioner notified a senior member of her command, a SHCM (E-9), about the incident. Nevertheless, at a Captain's Counseling on October 14, 2011, the Petitioner's commanding officer (CO) found she failed to adequately report her shipmate's incident; found that she exhibited a "complete lack of decorum and military bearing while being counseled"; and found that she failed to take ownership of, or accountability for her actions. As a result, the CO revoked her frocking to LSC. The CO informed the Petitioner that he would re-frock her to LSC after receiving positive recommendations from her chain-of-command. He also said he would extend the Petitioner aboard the ROOSEVELT until August 2012 to give her chain-of-command time to evaluate her performance. The Petitioner effectively declined the CO's offer by negotiating orders to leave the ship in February 2012. During the period between the Captain's Counseling and her detachment, the Petitioner had four documented performance issues including three counselings. In the detachment performance evaluation that she contests, the Petitioner's CO cited her "actions prior to her frocking, lack of initiative, and inability to grasp the responsibility required of a [chief petty officer]" - "clearly exhibit[ing] her unpreparedness to serve effectively as an E-7" - as the bases for not recommending her for advancement.

In support of its recommendation for relief, the Board relies on the recent statement of a chaplain who said he was present at the October 2011 Captain's Counseling. In his statement, dated March 3, 2014, the chaplain states that, "At absolutely no point did [the Petitioner] disrespect" the CO, and that she "maintained her professionalism." However, three statements made in January 2012 by other personnel present at the counseling – the ROOSEVELT's Command Master Chief and two Senior Chiefs – describe the Petitioner as argumentative, disrespectful, unprofessional, and failing to take responsibility for her actions, even after she was told several times to lower her voice and her CO gave her multiple chances to regain her composure. These more specific and contemporaneous statements, by themselves and when considered in the context of the entire record, carry far more weight than the chaplain's recent generalized statement and substantiate the CO's revocation of her frocking to E-7 and the detachment evaluation report she received.

For these reasons, the Petitioner's application for relief is denied.



Robert L. Woods
Assistant General Counsel
(Manpower and Reserve Affairs)

REC'D JUN 27 2014