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

HD
Docket No. NR2458-14
8 August 2014

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

Subj: LS1 [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 6 Dec 13 w/attachments
(2) PERS-32 memo dtd 3 Jun 14

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 original enlisted performance evaluation report for 16 November 2011 to 15 August 2012, signed by Lieutenant Commander H. R. F---, Supply Corps, U. S. Navy Reserve, and the evaluation report letter-supplement dated 25 August 2013 (copies at Tab A), and replacing them with the supplemental report for the same period signed by Commander C. S. Blatt, U. S. Navy Reserve (with Petitioner's application at enclosure (1)).

2. The Board, consisting of Messrs. Gattis, Green and Ivins, reviewed Petitioner's allegations of error and injustice on 7 August 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. The contested original evaluation, dated 18 November 2012 and submitted by Lieutenant Commander F---, Petitioner's executive officer (XO), marked him straight "3.0" (third best of five possible marks), and block 45 ("Promotion Recommendation - Individual") was marked "Must Promote" (second best of five possible marks). The letter-supplement raised the marks in blocks 33 and 38 from "3.0" to "4.0" (second best), with justifications to be included in block 43 ("Comments on Performance"). Block 43, as originally submitted, stated only "Evaluation submitted upon detachment of [Petitioner]."

d. With his application, Petitioner provided the supplemental evaluation dated 15 August 2012 and submitted by Commander B---, his commanding officer (CO). This report, which was not signed by Petitioner, assigned him only one mark of "3.0" (block 35), four of "4.0" (blocks 33, 34, 36 and 38) and two of "5.0" (best) (blocks 37 and 39); and block 45 was marked "Early Promote" (best). Block 43 included substantive favorable comments. Petitioner also provided letters dated 28 January and 22 June 2013 from Commander B--- to the Commander, Navy Personnel Command (NPC), stating that the revised report was intended to correct administrative errors in the original report, and that the "[XO] put incorrect marks on the members (sic) form" and requesting action to remove the existing evaluation signed by the [XO] and replace with the enclosed evaluation report signed by the CO."

e. Petitioner further provided an e-mail dated 22 January 2013 from Lieutenant Commander F---, in reply to an inquiry from another officer as to whether the low marks in the contested original evaluation were deliberate or an oversight, stating "I was just signing for [Commander B---] it was a last minute deal so it is an oversight and should be corrected - it's a mistake..."

f. In enclosure (2), PERS-32, the NPC office with cognizance over the subject matter of Petitioner's case, has commented to the effect that it should be denied, because the supplemental report would be rejected as it does not show Petitioner's signature or a statement as to why he was unavailable to sign, and Commander B--- did not state that Lieutenant Commander F---'s reporting senior authority was removed or never in effect. PERS-32 further stated that Lieutenant Commander F--- has corrected the contested original evaluation with a supplemental letter.

g. Bureau of Naval Personnel Instruction 1610.10C, enclosure (1), paragraph 3.a says "COs are a reporting senior by virtue of their command authority."

CONCLUSION:

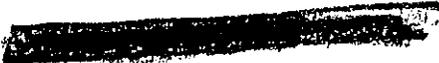
Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an error and injustice warranting the requested relief.

In light of paragraph 3.g above, the Board finds that Commander B---, as the CO, was authorized to act as Petitioner's reporting senior. The Board finds that by choosing to act as Petitioner's reporting senior for the period in question, the CO effectively revoked whatever reporting senior authority had been delegated to the XO. Particularly noting Lieutenant Commander F---'s admission, in the e-mail of 22 January 2013, that the contested original evaluation is an oversight and mistake that should be corrected, the deference to which Commander B---'s evaluation is entitled by virtue of its having been submitted by the CO, and the fact that this evaluation is dated three months earlier than Lieutenant Commander F---'s, the Board finds that Commander B---'s evaluation is the one that should be accepted as Petitioner's evaluation for the period concerned. Finally, the Board considers it an immaterial error that this evaluation has not been signed by Petitioner, as he clearly not only knows of but also approves of its content.

In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following original enlisted performance evaluation report and related material, including the evaluation report letter-supplement dated 25 August 2013:

Date of Report	Reporting Senior	Period of Report	
		From	To
18 Nov 12	 USNR	16 Nov 11	15 Aug 12

b. That the supplemental enlisted performance evaluation report for the same period submitted by Commander C. S. B---, USNR, to be forwarded by this Board, be filed in place of the removed report.

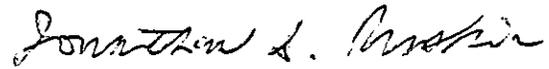
c. That appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

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 or material be added to the record in the future.

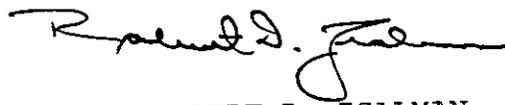
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.


ROBERT D. ZSALMAN
Acting

Reviewed and approved:



8/18/14

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