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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. NR2595-14
15 August 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 11 Aug 13 w/attachments
(2) PERS-32 memo dtd 3 Jun 14
(3) Subject's e-mail dtd 10 Aug 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 modifying the enlisted performance evaluation report for 16 November 2011 to 15 November 2012 (copy at Tab A) by removing, from block 43 ("Comments on Performance"), "[Petitioner] had declined to reenlist therefore missing deployment of his unit. Therefore he is not recommended for retention." and changing the mark in block 47 ("Retention") from "Not Recommended" to "Recommended."

2. The Board, consisting of Messrs. Chapman, Marquez and Rothlein, reviewed Petitioner's allegations of error and injustice on 14 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 evaluation assigned Petitioner straight marks of "3.0" (third best of five possible) and in block 45 ("Promotion Recommendation") marked him "Promotable" (third best). Block 51 ("Signature of Individual Evaluated") showed "MEMBER REFUSED TO SIGN."

d. Petitioner contends that no official orders were ever issued for his mobilization; that he extended for one year in February 2013; that his command had ample time to issue him mobilization orders; and that his other performance evaluations are "spotless." His immediately preceding evaluation for 15 November 2010 to 15 November 2011 (copy with Petitioner's application at enclosure (1)), from the same reporting senior, had a "4.0" trait mark average and in block 45 marked him "Early Promote" (best). Block 47 was marked "Recommended."

e. In enclosure (2), PERS-32, the Navy Personnel Command office with cognizance over the subject matter of Petitioner's case, has commented to the effect that the request should be denied, because the comments and marks assigned in an evaluation are at the discretion of the reporting senior. PERS-32 did affirm that Petitioner extended his enlistment for one year on 8 February 2013 and noted that he reenlisted on 12 February 2014, notwithstanding the contested recommendation against retention.

f. In enclosure (3), Petitioner's reply to PERS-32, he said the requested relief is warranted, in part because after the command had informed him of the possibility of requesting a hardship waiver of mobilization, his request was denied on the basis that employment considerations do not constitute hardship.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an injustice warranting the requested relief. In this regard, the Board finds Petitioner was not obligated to deploy because orders mobilizing him were never issued. The Board further finds the contested comments and mark are inconsistent with the rest of the evaluation in which they appear, and inconsistent with the previous evaluation from the same reporting senior. The Board also particularly notes that Petitioner extended his enlistment and has reenlisted. The Board concludes that the comments and mark at issue were unjust, as they were in reprisal for Petitioner's not having gone on deployment. 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 2011 to 15 November 2012, signed by [REDACTED] CEC, USNR and dated 11 February 2013:

(1) Block 43: Remove "[Petitioner] had declined to reenlist therefore missing deployment of his unit. Therefore he is not recommended for retention."

(2) Block 47: Change mark from "Not Recommended" to "Recommended."

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.

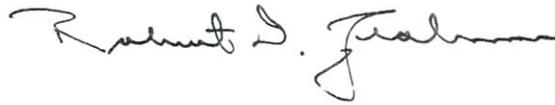
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.



ROBERT D. ZSALMAN
Acting

Reviewed and approved:

10/24/14



ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000