



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

dn

HD

Docket No. NR2686-14

29 October 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 Dec 13 w/attachments
(2) PERS-834 ltr dtd 14 Jul 14
(3) PERS-80 memo dtd 4 Aug 14
(4) PERS-32 memo dtd 20 Aug 14
(5) Counsel's ltr dtd 2 Oct 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 removing the fitness report for 1 October 2004 to 1 October 2005 (copy at Tab A) and by implication, the fitness report for 17 September 2005 to 10 March 2006 (copy at Tab B) and all documents referencing the request for your detachment for cause (DFC) dated 21 July 2005 (copy at Tab C). Petitioner also requested promotion to captain (pay grade O-6) and, by implication, removing documentation of his removal from the Fiscal Year (FY) 06 Reserve Staff Captain Promotion List (copy at Tab D), which was based on the DFC.

2. The Board, consisting of Messrs. Hedrick, Marquez and Sproul, reviewed Petitioner's allegations of error and injustice on 29 October 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. In enclosure (2), PERS-834, the Navy Personnel Command (NPC) office with cognizance over officer performance, has commented to the effect that the DFC documentation should stand.

c. In enclosure (4), PERS-80, the NPC office with cognizance over officer promotions, has commented to the effect that if this Board determines that the DFC should be removed, Petitioner should submit a request for a special selection board for the FY 06 Reserve Staff Captain Selection Board pursuant to Secretary of the Navy Instruction 1420.1B.

d. In enclosure (4), PERS-32, the NPC office with cognizance over fitness reports, has commented to the effect that both contested fitness reports should be removed.

e. In enclosure (5), Petitioner's counsel's reply to the NPC advisory opinions, counsel drew attention to the supporting statement dated 10 August 2005 from Captain (Selectee) D. R. T---.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (4), the Board finds the existence of an error warranting partial relief, specifically, removing both contested fitness reports.

The Board substantially concurs with enclosure (2) in finding that the contested DFC, as well as the removal from the promotion list that was based on the DFC, should stand. In this regard, the statement from Captain (Selectee) T--- did not persuade the Board that the DFC was unwarranted.

In view of the above, the Board directs the following limited corrected action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following fitness reports and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
08 Oct 05	[REDACTED] USNR	01 Oct 04	30 Sep 05
15 Aug 06	[REDACTED] USNR	17 Sep 05	10 Mar 06

b. That there be inserted in Petitioner's navel record a memorandum in place of each 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 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 the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.



JONATHAN S. RUSKIN
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



ROBERT J. O'NEILL
Executive Director