



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

JSR  
Docket No: NR2811-14  
24 April 2014

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

Subj: SGT [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 30 Apr 13 w/attachments  
(2) HQMC MMSB/PERB memo dtd 24 Feb 14  
(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 removing the fitness report for 1 April to 16 May 2012 (copy at Tab A).

2. The Board, consisting of Messrs. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 24 April 2014. Pursuant to the Board's regulations, the majority, Messrs. Hicks and Spooner, determined that the corrective action indicated below should be taken on the available evidence of record. The minority, Mr. Swarens, recommended that Petitioner's request be denied. 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. The contested fitness report, which reports Petitioner's disenrollment from drill instructor (DI) school, is designated

"adverse" in section A, item 5.a. In section I (reporting senior (RS)'s "Directed and Additional Comments"), the RS stated the reason for this designation was that the disenrollment was "for lack of reasonable effort." Petitioner submitted a statement, Addendum Page 1 of 2, in which he noted that after he had begun the school, his wife filed for divorce (court documents at enclosure (1) show she filed on 19 April 2012). He said that the consequence of this was that "I have not been performing the right way and it is also obstructing my abilities to focus." He added "I am not mentally or emotionally stable to complete the course at this time in my life and career." In his application, he points out that he originally volunteered for the school, and that at that time, "my family was stable." In section K.4 (reviewing officer (RO)'s comments), the RO stated he personally witnessed that Petitioner was counseled about his unwillingness to complete the course "due to lack of reasonable effort." He said that despite his own advice to Petitioner that the adverse nature of his disenrollment would harm his future chances for promotion and reenlistment, Petitioner "renewed his unwillingness to complete the course." The third sighting officer sighting, Addendum Page 2 of 2, reflects that he said he also personally counseled Petitioner on the consequences of his decision to drop from the school, and that he "gave him an opportunity to return to training--which he refused."

e. In enclosure (2), the Headquarters Marine Corps Performance Evaluation Review Board (PERB) commented to the effect that Petitioner's request should be disapproved, as "The reporting officials indicated that they were willing to work with [Petitioner] and return him to training" but he insisted on being dropped. The PERB found it was "unfortunate, but not likely, that [Petitioner's] marital problems started only 19 days after he reported to DI school on 1 April 2012 when his wife filed divorce papers..."

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the majority of the Board finds an injustice warranting removal of the contested fitness report. In this regard, the majority finds that in view of the highly unfortunate circumstance of Petitioner's wife having filed for divorce while he was attending the school, the more appropriate and compassionate course would have been to drop him with a fitness report that was not adverse, but rather one that reflected a non-stigmatizing drop "for the good of the service." In view of the above, the majority recommends the following corrective action:

MAJORITY 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 Report	
		From	To
14 May 12	[REDACTED]	01 Apr 12	16 May 12

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 majority'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.

MINORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the minority of the Board substantially concurs with enclosure (2) in finding Petitioner's request should be denied. Accordingly, the recommendation of the minority is as follows:

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

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. Zsalmán*

ROBERT D. ZSALMAN  
Acting

MAJORITY REPORT

Reviewed and approved: \_\_\_\_\_

*5/2/14*

*Robert L. Woods*  
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MINORITY REPORT:

Reviewed and approved: \_\_\_\_\_