



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

JSR
Docket No. NR5246-14
26 June 2014

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 12 Dec 13 w/attachments
(2) HQMC MMRP-13/PERB memo dtd 21 Apr 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 January to 4 November 2011 (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 Board 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, 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 is adverse, as it reflects Petitioner failed the Physical Fitness Test (PFT). The reviewing officer (RO) indicated that he did not concur with the reporting senior (RS), stating the following in section K.4:

"[Petitioner] had an issue with his ankle and decided to take the PFT despite the Flight Surgeon telling him not to. He did take the PFT and passed it, even with the ankle pain. The RS is required to submit this report as adverse, I do not concur." Petitioner's statement noted that he had successfully completed and passed a full PFT, but this score was not annotated into the Marine Corps Total Force System because the date was beyond the June 30 deadline. The third sighting officer verified that Petitioner "did not complete a PFT IAW [in accordance with] the Physical Fitness Program."

d. In support of his application, Petitioner submitted a statement dated 12 December 2013 from the RO, recommending "in the strongest terms" that the contested fitness report be removed. He noted that his nonconcurrency with the report had been based on Petitioner's having been injured before the PFT, but that he had since learned that Petitioner had also hurt himself while running the PFT. Therefore, and in accordance with Marine Corps Order 6100.13 (from which he quoted), he concluded that Petitioner should have been given an opportunity to retake the PFT at a later date, and the RS should not have given him an adverse fitness report.

e. In enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) commented to the effect that Petitioner's request should be disapproved, as he "provides no medical documentation proving that he was injured prior to the PFT and that the Flight Surgeon told him not to run it, as the RO states in his report review," nor does he provide medical documentation showing that he was injured during the PFT.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosure (2), and especially in light of the RO's statement of 12 December 2013, the Board finds an injustice warranting the requested relief. In this regard, the Board finds that the RO's statement is sufficient, without medical documentation, to establish that Petitioner should not have received an adverse fitness report. 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 fitness report and related material:

Date of Rept	Reporting Senior	Period of Report	
		From	To
22 Mar 12		01 Jan 11	04 Nov 11

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.

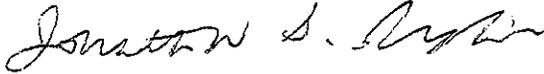
c. That the magnetic tape maintained by HQMC be corrected accordingly.

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.

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:



7/21/14

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