



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

TAL
Docket No: 6308-13
13 February 2015

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN, XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case summary with attachments
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an officer in the Navy, filed enclosure (1) with this Board requesting that his naval record be corrected by removing any and all derogatory material referencing the imposition of nonjudicial punishment (NJP) on 19 October 2011, for making a false official statement, a Punitive Letter of Reprimand (LOR) dated 23 October 2011, fitness reports (FITREP) for the periods of 11 March 2011 to 31 January 2012 and 1 February 2012 to 11 May 2012, the Detachment for Cause (DFC) dated 27 November 2011, and the Removal of Permanent Promotion to Lieutenant Commander dated 22 January 2014. This request includes, but is not limited to any and all other references surrounding the circumstances of the NJP as reflected in his Official Military Personnel File (OMPF).

2. The Board, consisting of Mr. Bey, Ms. White-Olson, and Mr. Grover, reviewed Petitioner's allegations of error and injustice on 28 January 2015 and, pursuant to its regulations, and 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. In addition, the Board considered the advisory opinion (AO) furnished by the Office of the Judge Advocate General (OJAG), Criminal Law Division (Code 20) dated 13 November 2014, a copy of which is attached with enclosure (2).

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. On 5 October 2011, Petitioner's squadron conducted an initial Preliminary Inquiry (PI) into possible misuse of auto throttles. Petitioner initially denied flying on auto throttles, then later admitted during this same questioning to flying on auto throttles inappropriately. The squadron's PI officer recommended no NJP. On 13 October 2011, the Executive Officer (XO) Strike Fighter Squadron FOURTEEN (VFA-14) was appointed to conduct an additional PI and recommended that NJP should be imposed. On 19 October 2011, Commander Carrier Air Wing NINE (CVW-9) awarded NJP to Petitioner for making a false official statement. The punishment imposed was a punitive LOR. Petitioner did appeal the NJP, but the appeal was denied.

d. As a result of the NJP, on 4 June 2012, the Petitioner was the subject of a Detached for Cause (DFC) administrative action by reason of misconduct and as such, he was required to show cause for retention. On 27 September 2012, a BOI, convened as a result of the DFC, found that separation was not warranted. Petitioner was retained.

e. Petitioner alleged that his rights were violated during both the NJP and appellate process. A letter from Petitioner's commanding officer in support of this allegation, states in part, that it was inappropriate behavior by the NJP and appeal authorities (CVW-9 and CSG-3), when upon review of the initial PI, ordered an additional PI then subsequently directed the commanding officer to impose NJP, and when the commanding officer refused to do so, CVW-9 assumed authority and imposed NJP.

f. An advisory opinion from OJAG, Code 20 states, in part, that despite the lack of sufficient facts to determine procedural violations, equitable authority and discretion should be used upon reviewing the allegations of interference by superior commanders and Petitioner's otherwise exemplary service record. It further infers that such interference by superior commanders give the appearance of possible unlawful command influence and can be determined as probable material error or injustice pursuant to 10 U.S.C 1552.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinion from OJAG, the majority finds the existence of an error and injustice based on the appearance of possible unlawful command influence, which warrants corrective action. In this regard, the Board concludes that the Petitioner's request warrants favorable action.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by totally obliterating or removing the 19 October 2011 NJP, the punitive LOR dated 23 October 2011, the fitness reports for the periods of 11 March 2011 to 31 January 2012 and 1 February 2012 to 11 May 2012, the Detachment for Cause (DFC) dated 27 November 2011, and the Removal of Permanent Promotion to Lieutenant Commander dated 22 January 2014.

b. That any and all materials 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 materials 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.

d. That no further relief be granted.

MINORITY CONCLUSION:

Ms. White-Olson disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

MINORITY RECOMMENDATION:

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.



T. J. Reed
Recorder

5. The foregoing action of the Board is submitted for your review and action.



ROBERT J. O'NEILL
Executive Director

MAJORITY REPORT APPROVED:

~~MINORITY REPORT APPROVED~~ *RW*



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

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