



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

█
Docket No: 4034-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) Title 10 U.S.C. § 1552
(b) BUPERSINST 1610.10E (EVALMAN)

Encl: (1) DD Form 149 w/attachments
(2) Evaluation & Counseling Record, 16Sep19 to 13Mar20
(3) Revised Evaluation & Counseling Record, 16Sep19 to 13Mar20
(4) █ Ltr of Instruction, 21Feb20
(5) Petitioner rebuttal submission of evaluation, 12Apr21
(6) CO, Afloat Training Group █ endo, 16Aug21
(7) Petitioner request for redress, 3Jun21
(8) NPC Memo 1610 PERS 32, 6Jun22
(9) Petitioner response to AO, 16Jun22

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing enclosure (2), his 16 September 2019 to 13 March 2020 Evaluation and Counseling Record (Eval) currently on file in his official military personnel file (OMPF), and replacing it with enclosure (3).

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 26 July 2022 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, relevant portions of Petitioner's naval records, reference (b), 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, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner was issued enclosure (4), a Letter of Instruction (LOI) by the Commanding Officer (CO), █ to address numerous instances of dereliction of duty, lack of impartiality and poor leadership. Petitioner acknowledged the contents of the LOI and did not submit a statement.

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c. Petitioner was subsequently issued enclosure (2), a Periodic/Regular Eval for the reporting period 16 September 2019 to 13 March 2020. The Petitioner received a mark of “2.0” in Blocks 33, 35, and 37. Block 41 included the following comment: “*Received LOI on 28 February 2020 for poor leadership, lack of impartiality, and questionable character.*” The Petitioner received a “Significant Problems” (SP) promotion recommendation. The Eval was signed by the Petitioner on 21 April 2020. In response to the Eval, the Petitioner submitted enclosure (5), disagreeing with the “2.0” mark given in Block 35 and asserting that he was never counseled or questioned regarding any suspected negligence or dereliction of his duties. The CO, Afloat Training Group [REDACTED] endorsed the Petitioner’s response to the Eval, forwarding for inclusion into the member’s official record. Enclosure (6). Both documents are currently on file in the Petitioner’s OMPF.

d. On 3 May 2021, PERS-32 received and processed enclosure (2), which is currently on file.

e. On 3 June 2021, the Petitioner submitted a request for redress, citing that there was an original Eval with “Promotable” (P) promotion recommendation, along with the summary sheet signed by the RS that was submitted. In this redress, Petitioner requests that correction be made to the original Eval to remove comments concerning the LOI. Petitioner contends that the Eval received was not debriefed, but was told it was rejected, and the updated Eval had another RS and was changed to “SP” promotion recommendation. Petitioner’s redress also cited that he was placed on limited duty for mental health concerns and was on that status and off the ship for 3 weeks when he was issued the LOI, and the CO, [REDACTED] sent an altered version of the original Eval, which is currently on file, signed by the RS and him. Enclosure (7).

f. On 24 January 2022, PERS-32 received the duplicate Eval, enclosure (3), for the same reporting period with changes to Blocks 33, 37, 40, 41, and 42, recommending a “P” for promotion. The comment regarding the receipt of an LOI was deleted and replaced with the following: “*Blk 35: Member received 2.0 mark in Professionalism for questionable behavior and conduct in day-to-day interactions with Sailors within his department.*” The Eval was signed by the Petitioner on 12 August 2021. Although the Petitioner indicated that he intended to submit a statement, it was not in his file nor did he include it in his application. PERS-32 rejected the duplicate Eval, on 24 January 2022, due to it being a duplicate submitted with changes to the performance traits and promotion recommendation. Enclosure (8).

g. Petitioner contends that the Eval currently on file, enclosure (2), is a falsified version of the Eval that was never officially signed by him or the CO. Petitioner asserts that enclosure (3), which the RS re-submitted, but was rejected by PERS-32, is the correct Eval that should be on file.

h. Enclosure (8), the advisory opinion (AO), furnished by PERS-32, recommended that the Petitioner contact the RS to submit a Letter-Supplement, attaching the revised Eval. PERS-32 noted that in accordance with reference (b), the Eval currently on file will remain on file with the Letter-Supplement and revised report appended, should the RS take the recommended action.

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i. Petitioner submitted enclosure (9) in response to the AO, reiterating the confusion all this has caused as a result of PERS-32 rejecting the original transfer Eval signed as a "P" but was changed by the current command as an "SP" with the wrong RS. Petitioner further states that he sent the Eval back to his current command explaining that it was the wrong Eval, the previous command never sent a new Eval for signature, but doctored it and changed the marks and summary review sheet to show an "SP".

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board finds the existence of an error and injustice warranting corrective action. The Board noted that Petitioner furnished sufficient evidence that establishes an error and injustice warranting removal of the Eval at enclosure (2). Specifically, the Board concluded that the RS attempted to fix the situation but was rejected and subsequent efforts to reach the RS have been futile. The Board further noted that enclosures (5) and (6) do not match the contents of enclosure (2), but reflect what is contained in enclosure (3).

Although PERS-32 recommended the Petitioner contact the RS to submit a Letter-Supplement with the duplicate Eval appended, the Board believed it to be in the best interest of all parties that the contested Eval currently on file should be removed and replaced with the corrected version. Thus, the Board concluded that the contested Eval shall be removed from Petitioner's OMPF and replaced with the corrected version. However, the Board also determined Petitioner's rebuttal, enclosure (5), and the CO's endorsement, enclosure (6), shall remain in the Petitioner's OMPF.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by removing enclosure (2), his Eval for the reporting period 16 September 2019 to 13 March 2020, from his OMPF, and replacing it with enclosure (3), his Eval for the same reporting period.

No other changes to his record are required.

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.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/29/2022

[REDACTED]