



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

[REDACTED]  
Docket No. 5676-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,  
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552  
(b) BUPERSINST 1610.10E

Encl: (1) DD Form 149 w/attachments  
(2) Fitness report for the reporting period 16 Nov 20 to 7 Jun 21  
(3) NPC memo 1610 PERS-32, 15 Aug 22  
(4) Office of Legal Counsel (PERS-00J) ltr, 22 Sep 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Petitioner's naval record be corrected by removing his fitness report for the reporting period 16 November 2020 to 7 June 2021.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 October 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, 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. Petitioner was issued a Detachment of Individual/Regular fitness report for the reporting period 16 November 2020 to 7 June 2021. Petitioner's fitness report was marked 2.0 for the performance trait 'Military Bearing/Character'. As justification, the reporting senior (RS) included a block 43 comment that, "Production Control and CDI qualifications suspended by the AIMD Maintenance Officer due to his inability to make sound decisions and follow regulations." In addition, block 51 'Signature of Individual Evaluated' indicates, "CERTIFIED COPY PROVIDED." Enclosure (2).

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c. In correspondence from Petitioner's counsel, he noted the block 36 performance trait mark and block 43 RS comment. Petitioner contends that reference (b) requires ratings to be substantiated, the comment does not substantiate the claims made and is nothing more than a generalized assertion. Petitioner argued that the command never actually removed his "Production control and CDI" qualifications. The adverse rating and comments are based on an assertion that is untrue, thus the rating and corresponding comments are erroneous and must be removed. Petitioner also contends that he was never counseled or alerted to his alleged "inability to make sound decisions" or his alleged failure to "follow regulations." Petitioner claims that he was hospitalized from 8 May 2021 through 11 May 2021, for "suicidal ideation and further contends that members must not be given a less favorable report solely because of medical issues. Petitioner concluded that the command penalized him for his medical challenges by making the adverse rating and corresponding comments.

d. In an advisory opinion (AO) furnished by PERS-32, the AO determined that the fitness report is technically invalid. The AO explain that the RS was required to obtain the member's signature for comments suggesting a persistent weakness, continuing incapacity, or unsuitability for specific assignment or promotion. The AO also explained that according to reference (b), members must sign all adverse reports or a statement of why the member was unable to sign, will be placed in the member's signature block. The AO determined that the RS's comments are adverse and required the Petitioner's signature acknowledging the contents of the evaluation report and the right to submit a statement and "Certified Copy Provided" is not allowed to be placed in the signature block. The AO recommended that the report be removed and replaced with a memorandum for continuity. Enclosure (3).

e. In an AO furnished by PERS-00J, the AO recommended that the Board approve Petitioner's request. The AO noted that Petitioner provided administrative data showing that he continues to have his ADM Qualifications, contrary to the statement in his evaluation report. The AO determined that by issuing an adverse evaluation using the non-adverse process, the RS created an injustice against the Petitioner. The AO also determined that the RS did not properly communicate to the sailor that the evaluation was adverse and since the RS failed to follow reference (b), the fitness report should be removed and replaced with a memorandum for continuity. Enclosure (4).

## CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting corrective action.

The Board substantially concurred with the AOs that the block 43 comment are adverse and unsupported by evidence. The Board noted that according to reference (b) Petitioner's signature was required and that he be afforded the opportunity to submit a statement. In this regard, the RS failed to comply with applicable regulations. Accordingly, the Board determined that Petitioner's contested fitness report should be removed.

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[REDACTED]

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), Petitioner's fitness report for the reporting period 16 November 2020 to 7 June 2021.

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

10/20/2022

[REDACTED]