



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

[REDACTED]
Docket No. 8537-22
Ref: Signature Date

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

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

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

Encl: (1) DD Form 149 w/attachments
(2) Fitness Report & Counseling Record, 1 Nov 20 to 31 Oct 21
(3) NPC memo 1610 PERS-32, 7 Dec 22

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).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 January 2023 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, 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 (2), a Periodic/Regular fitness report for the reporting period 1 November 2020 to 31 October 2021 while serving as Action Officer for the Chief of [REDACTED]. Petitioner was marked "Progressing" in Block 35 for the performance trait Military Bearing/Character. Comments in Block 41 further stated "Service Member demonstrated poor judgment in his personal conduct, resulting in multiple interactions with law enforcement."

c. Petitioner asserts that during the reporting period, he had an open Family Advocacy Program Investigation that has since been adjudicated and closed. He contends that the Reporting Senior (RS) inserted prohibited derogatory language/information into Block 41 of the contested fitness report which was not in accordance with reference (b).

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d. The advisory opinion, enclosure (3), furnished by Navy Personnel Command (PERS-32), noted the fitness report does not comment on an investigation, however, it may be perceived as adverse, which requires Petitioner's acknowledgement and the right to submit a statement in accordance with reference (b). PERS-32 recommended redaction or removal of the contested fitness report, and replacement with a memorandum of continuity in the Petitioner's OMPF.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinion, the Board finds the existence of an error warranting corrective action. The Board noted that Petitioner furnished sufficient evidence that the contested report was not in accordance with reference (b). Further, the Board noted that, in addition to adverse comments in Block 41, Block 35 of the fitness report was marked as "progressing." The Board determined removal of the fitness report was necessary to remove any perceived adversity from his record. The Board thus concluded that redacting the contested fitness report would not entirely correct the error, and that it shall instead be removed from Petitioner's OMPF, and replaced with a memorandum of continuity.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), his fitness report for the reporting period 1 November 2020 to 31 October 2021, and that it be replaced with a memorandum of continuity.

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.

1/30/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]