



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

██████████
Docket No. 8773-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████ ██████████, USN,
██████████

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

Encl: (1) DD Form 149 w/attachments
(2) Fitness Report & Counseling Record, 27 Jun 21 to 22 Mar 22
(3) Commander, ██████████ Navy Expeditionary Logistics Regiment, 1 Apr 22
(4) ██████████ ██████████ MEMORANDUM, 22 Jun 22
(5) NAVPERS 5354/2 Complaint Form, 21 Oct 22
(6) Advisory Opinion by NPC PERS-32, 12 Dec 22
(7) Response to Advisory Opinion, 4 Jan 23

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 ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 10 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Petitioner was issued a Detachment of Individual/Regular fitness report for the reporting period 27 June 2021 to 22 March 2022. In block 41, the reporting senior (RS) noted that the fitness report "documents my loss of confidence in [Petitioner] serving as my OIC forward deployed with CFT 56/3. During his tenure as OIC there were significant command climate issues and concerns sustained. His lack of leadership and taking the appropriate actions to uphold and support the Navy's Equal Opportunity policies, significantly affected our Sailors' morale." Block 46 of the fitness report did not contain the Petitioner's signature or any indication of Petitioner's intent to submit a statement. Enclosure (2).

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[REDACTED]

b. On 1 April 2022 the Commander, [REDACTED] Navy Expeditionary Logistics Regiment notified Petitioner of adverse matters contained in block 41 of the contested fitness report. Petitioner was notified of his requirement to sign the report and to indicate whether he intended to submit a statement. Enclosure (3).

c. In correspondence date 22 June 2022 Petitioner responded to the 1 April 2022 notification and acknowledged his receipt of the notice, however, the adverse fitness report indicated that command climate issues were sustained. Petitioner noted that there is an ongoing investigation, thus no command climate issues related to his leadership have been sustained as of 1 April 2022 or the date of the memorandum. Petitioner further requested that the fitness report be withdrawn until the investigation is complete. Enclosure (4).

d. On 21 October 2022 the Commander, U.S. Fleet Forces Command signed the Navy Equal Opportunity and Harassment Complaint indicated the that the complaint against Petitioner was found to be unsubstantiated. Enclosure (5).

e. An advisory opinion (AO), from Navy Personnel Command (PERS-32), was furnished for the Board's consideration recommending that Petitioner's fitness report be redacted by removing the adverse comments in the first paragraph, thus the remainder of the fitness report would not be adverse. The AO also indicated support to remove the fitness report if directed by the Board. The AO noted that the contested report is perceived as adverse and requires Petitioner's signature. The AO also noted that reference (b) requires a RS to obtain the member's signature for comments suggesting a persistent weakness, continuing incapacity, or unsuitability for specific assignment or promotion. 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 members signature block. The AO determined that the contested fitness report was submitted in error. Enclosure (6).

f. In correspondence from Petitioner's counsel, he indicated that complete removal of the fitness report was preferred over redaction. Petitioner disagreed with the AO's determination that the report makes no reference to an investigation. Petitioner felt the statement "significant command climate issues and concerns sustained" was plain language for an investigation and was simply untrue. Enclosure (7).

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 warranting corrective action.

The Board substantially concurred with the AO that Petitioner fitness report is in error. In this regard, the Board noted that the RS comments rendered the fitness report adverse and the fitness report did not contain Petitioner's signature as required by reference (b). The Board also noted that the RS comments related to command climate were in error because the investigation was still ongoing at the time the fitness report was processed. Moreover, Petitioner provided sufficient evidence that the investigation found that the allegations were unsubstantiated. In the

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interest of justice, the Board determined that redaction would be insufficient to remove any hints of adversity during the reporting period. The Board, thus concluded that the fitness report should be removed.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2).

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.

2/1/2023

[REDACTED]
Deputy Director
[REDACTED]