



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

█
Docket No. 1525-23
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

Encl: (1) DD Form 149 w/attachments
(2) Fitness report for the reporting period 16 Nov 20 to 15 Nov 21
(3) NPC memo 1610 PERS-32 of 28 Feb 23

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 to modify his fitness report for the reporting period 16 November 2020 to 15 November 2021 by removing the block 43 statement, "BLOCKS 36 and 40: Despite member's desire to perform at the highest level, member awarded EMI for insubordination conduct toward leadership."

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 7 March 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, finds as follows:

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

b. Petitioner was issued a Periodic/Regular fitness report for the reporting period 16 November 2020 to 15 November 2021. Block 43 included the statement, "BLOCKS 36 and 40: Despite member's desire to perform at the highest level, member awarded EMI for insubordination conduct toward leadership." Enclosure (2).

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

c. In his application, Petitioner contends that block 43 should not have included the contested statement because he never went through any disciplinary procedures or received a counseling chit. Enclosure (1).

d. On 28 February 2023, the Navy Personnel Command (PERS-32) furnished an advisory opinion (AO) for the Board's consideration recommending removal of the contested statement. The AO noted that pursuant to the Navy Performance Evaluation System Manual (EVALMAN), any comment concerning adverse actions against a member or suggesting persistent weaknesses must be treated as adverse matter, regardless of the grades assigned. The AO also noted that members must sign all adverse evaluation reports, or a statement will be placed in the member's signature block to explain why the member was unable to sign. In this case, the AO determined that the report violates the EVALMAN, therefore, the adverse statement should be removed as Petitioner requested. Enclosure (3).

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 AO. In this regard, the Board noted the contested statement and determined that comments regarding Petitioner's insubordinate conduct and extra military instruction is deemed adverse. The Board also determined that Petitioner should have been afforded the opportunity to review the fitness report and to submit a statement. The Board concluded that the reporting senior failed to comply with the EVALMAN, therefore, the contested statement should be removed.

RECOMMENDATION

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

Petitioner's naval record be corrected by modifying enclosure (2) by removing the block 43 statement:

“BLOCKS 36 and 40: Despite member's desire to perform at the highest level, member awarded EMI for insubordination conduct toward leadership.”

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

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

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

3/25/2023

