



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 00953-01
5 December 2001

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

Subj: LT [REDACTED], MSC, USNR, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 19 Jan 01 w/attachments
(2) PERS-61 memo dtd 30 Apr 01
(3) PERS-311 memo dtd 24 Jul 01
(4) Subject's ltr dtd 5 Nov 01 w/enclosures
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by modifying the fitness report for 1 February to 15 July 1999 to reflect "Early Promote" vice "Must Promote" in block 42 (promotion recommendation - individual). A copy of the fitness report is at Tab A. Petitioner further impliedly requested removal of her failure of selection before the Fiscal Year 02 Staff Lieutenant Commander Selection Board, so as to be considered by the selection board next convened to consider officers of her category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Messrs. Shy and Whitener and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 29 November 2001, 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, 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 alleged that the fitness report in question was marked "Must Promote" rather than "Early Promote" in reprisal for her protected communication. In correspondence attached as enclosure (2), PERS-61, the Navy Personnel Command (NPC) office having

cognizance over professional relationships, has recommended approving her request for fitness report modification on the basis of the finding by the Inspector General (IG), U. S. Naval Forces Central Command that her reprisal allegation was substantiated.

c. In correspondence attached as enclosure (3), PERS-311, the NPC office having cognizance over fitness report matters, has recommended that Petitioner's record remain unchanged. They acknowledged that the IG, U. S. Naval Forces Central Command found her allegation of reprisal to be substantiated; however, they further noted that both the Naval IG and the Department of Defense IG nonconcurred with this finding.

d. Enclosure (4) is Petitioner's rebuttal to the PERS-311 advisory opinion at enclosure (3). She takes issue with the basis on which the Naval IG and the Department of Defense IG nonconcurred with the reprisal finding of the IG, U. S. Naval Forces Central Command.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the PERS-311 opinion at enclosure (3), the Board finds the existence of an injustice warranting full relief. They substantially concur with the PERS-61 opinion at enclosure (2) in finding that the fitness report at issue should be corrected as requested. In light of the input from the Naval IG and Department of Defense IG, the Board does not consider it entirely clear that the contested fitness report was in reprisal. However, they find it more appropriate to grant the requested fitness report relief, rather than take the chance of letting a miscarriage of justice go uncorrected. The Board is satisfied that the uncorrected report harmed Petitioner's chances for promotion. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying her fitness report for 1 February to 15 July 1999, signed by [REDACTED], USN on 13 July 1999, as follows:

(1) Block 42 (promotion recommendation - individual): Move "X" from "Must Promote" to "Early Promote."

(2) Block 43 (promotion recommendation - summary): Change "Must Promote" entry from "1" to "0" and "Early Promote" from "0" to "1."

b. That Petitioner's record be corrected so that she will be considered by the earliest possible selection board convened to consider officers of her category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

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.

W. Dean Pfeiffer
W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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1610
PERS-61/215
30 Apr 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT [REDACTED] MSC, USNR,
[REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 23 FEB 01
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 06686-99

1. Reference (a) requested an advisory opinion in response to Lieutenant [REDACTED]'s request for a corrected fitness report (to change the "Must Promote" to "Early Promote") for the period ending July 1999, due to reprisal involving her EO complaint. Enclosure (1) is returned.

2. A Navy Inspector General investigation of 17 Feb 00 (appended to reference (a)) substantiates [REDACTED] report of reprisal and recommends that she receive a corrected fitness report, be given the opportunity to attend lost training and that corrective action be taken against the responsible management officials. Based on those findings, it appears there has been a violation of OPNAVINST 5354.1E.

3. Therefore, it is my opinion that [REDACTED]'s fitness report be changed and that the other recommendations listed above be executed.

[REDACTED]

Director, Professional
Relationships Division
(PERS-61)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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953-01

1610
PERS-311
24 July 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LT [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) COMUSNAVCEN ltr 5041 Ser 00IG/335 of 17 February 2000
(c) DON, Naval Inspector General ltr 5041/19990726 Ser N62/2365 of 21 December 2000

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests changes be made to her fitness report for the period 1 February 1999 to 15 July 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and her right to submit a statement. The member indicated she did desire to submit a statement. PERS-311 has not received the member's statement and the reporting senior's endorsement. The member provided a copy of her statement with her petition; however, it is not suitable for filing.

b. Per reference (a) Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement. Paragraph S-8.b states; "Submission of statement. For reports on E-5 and above, address the statement to Naval Personnel Command via the reporting senior who submitted the original report, or in the case of a Concurrent report, via the concurrent and regular reporting seniors."

c. The report in question is a Detachment of Reporting Senior/Regular report. The member alleges the fitness report is inaccurate, unjust, and unfair and wrongly submitted because of reprisal. The member further alleges the report as being adverse.

d. Lieutenant [REDACTED] requesting we change her promotion recommendation from "Must Promote" to "Early Promote." We cannot administratively make the requested change to the promotion block on a fitness report. Only the reporting senior who signed the original fitness report may submit supplementary material for file in the member's record. The report is

procedurally correct. It is not adverse as the member states and the report was not required to be referred to the member for a statement.

e. A fitness report is unique to the period being evaluated. Evaluating a subordinate's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior.

f. The member filed an EO complaint to support her contentions. Although reference (a) substantiated the member's allegations, reference (b) indicated the allegations of reprisal were not substantiated.

g. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular period.

h. Whether or not Lieut. [REDACTED] was given written or oral counseling, issued a Letter of Instruction (LOI) does not invalidate a fitness report.

i. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

[REDACTED]

Performance
Evaluation Branch