



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

HD:hd
Docket No: 04900-01
8 November 2001

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

Subj: CAPT [REDACTED], JR., USN [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 4 Jun 01 w/attachments
(2) PERS-311 memo dtd 6 Sep 01
(3) Subject's ltr dtd 10 Oct 01 w/enclosures
(4) Pers-OOJ memo dtd 7 Nov 01
(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 removing or amending the fitness reports for 18 April to 31 August 1996 (with letter-supplement dated 2 October 1996) and 1 September to 13 December 1996, copies of which are at Tabs A and B, respectively.

2. The Board, consisting of Messrs. Bishop, Caron and Ensley, reviewed Petitioner's allegations of error and injustice on 8 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. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has commented to the effect that Petitioner's record should remain unchanged.

c. Petitioner's letter at enclosure (3) provided additional supporting material and requested that advisory opinions be obtained from PERS-41, the NPC surface officer distribution office, and Pers-00J, the minority affairs office.

d. In correspondence attached as enclosure (4), Pers-OOJ found evidence of racial bias against Petitioner, and recommended that both contested fitness reports be removed.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the contents of enclosure (2), and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness reports and related material, including the letter-supplement dated 2 October 1996:

Date of Report	Reporting Senior	Period of Report	
		From	To
96Sep03	CAPT. [REDACTED] USN	96Apr18	96Aug31
96Dec13	CAPT. [REDACTED] USN	96Sep01	96Dec13

b. That there be inserted in Petitioner's naval record ONE memorandum in place of both removed reports, containing appropriate identifying data; that such memorandum state that the portion of Petitioner's performance record for 18 April to 13 December 1996 has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the removed material.

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.

Robert D. Zsalmán
For W. DEAN PFEIFFER
Executive Director

f. The member has provided two very impressive letters of support in his petition. One from Vice [REDACTED] Chief of Naval Operations (Fleet Readiness and Logistics), and Rear Admiral [REDACTED] USN (RET). While their comments add insight and reflect favorably on Captain [REDACTED] performance, they do not show that the fitness reports were in error or unjust.

g. Capt [REDACTED] states this perceived error or injustice has prevented him from screening for command and promotion. Failure to screen for command and enhancement of chances for promotion is not sufficient reason to remove a fitness report.

h. 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

7 November 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: BCNR PETITION ICO CAPT [REDACTED]

Ref: (a) BUPERSINST 1610.10

Encl: (1) BNCR PETITION PACKAGE DOCKET NO. 04900-01

1. Board for Correction of Naval Records (BCNR) requested PERS-00J opinion on the case of CAPT [REDACTED]. [REDACTED] no has petitioned changes to blocks 40-43 of performance report dated 18 Apr 96 to 31 Aug 96 and block 41 of performance report dated 13 Dec 96.

2. After review of enclosure (1), I have found the following:

a. The performance report for the period 18 April 1996 to 31 August 1996 has a letter supplement filed. It falls short of the remedy required to correct a grave error that had negative impact at the selection board. The initial response from the reporting senior indicated an unwillingness to change the performance report, but he later recanted as issues of bias arose. The reporting senior remedy did not go far enough to remove the questionable bias in the performance report.

Therefore, I recommend that the performance report for the period 18 April 1996 to 31 August 1996 be removed.

b. The reporting senior is charged with commenting on the performance and characteristics of an officer under his/her command. Also, the contents and grades assigned on a report are at the discretion of the reporting senior. However, the FITREP in question does not document Captain [REDACTED] s performance in professional expertise, tactical performance as a Surface Warfare Officer, or his leadership as an Officer in Command. It disproportionately and overwhelmingly addresses his achievements as a proactive and strong supporter for

Navy's equal opportunity objectives and highlights his physical readiness standards. The subtle reference to performance and strong emphasis to EO and physical standards as a Commanding Officer in the performance report for the period 96 SEP 01 to 96 DEC 13 raise the question of "bias", whether intentional or unintentional. There are three areas of concern:

(1) The comment "Outstanding PRT, 1st Place Ribbon at Fall 1996 Naval Station Track Meet as winning team member of SEM 4X100 Meter Relay (2nd Annual Award)" may be appropriate for a very junior officer but definitely is not appropriate for a senior level Commanding Officer or for any performance evaluation of an executive level individual. The statement dominates the performance report inputs. Individuals at the Commanding Officer level should be evaluated, selected and promoted based on performance. This comment fails to address [redacted] performance as Commanding Officer.

(2) The comment "Exceptional Equal Opportunity under the unique challenge of a 50% minority wardroom (SWO average is 13% minority)" this clearly shifts the focus from performance to the racial makeup of the wardroom. Let's not forget Capt [redacted] is a minority officer. Where is the unique challenge?

(3) Finally, the issue of [redacted] Recommendation. The FITREP instruction only requires the reporting senior to recommend screening to the next career milestone. Commodore [redacted] made that recommendation in block 40 of this report and in the supplemental letter in the August FITREP report. However, he articulated a different recommendation in block 41, stated "...logical choice for [redacted] Command". This is different than recommended for [redacted] in block 40. This is a mismatched statement and is inconsistent with the previous supplemental letter. This sends a questionable signal to the selection board. This raises the issue of bias in the FITREP.

The only 5.0 grades received by the member were:

- Block 34, Equal Opportunity, which focused on race.
- Block 35, Military Bearing and Character, where associated comments are focused on the athletic prowess

of the individual stereotype for African American men.

I cannot confirm whether racial bias has occurred in this case. However, whether intentional or unintentional, this performance report reflects certain negative stereotypes, which are improper for any performance report.

Due to the focus and bias nature of these statements, coupled with the omission of statements which should detail the performance characteristics of Capta- [REDACTED] (positive or negative), I strongly recommend the complete removal of both fitness reports for the periods dated 96APR18-96AUG31 and 96SEP01 to 96DEC13 from the member's record.



[REDACTED], U.S. Navy
Special Assistant for Minority
Affairs to the Chief of Naval
Personnel (Pers-00J)