



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

BJG
Docket No: 6686-01
6 December 2001

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

Subj: IT1 [REDACTED], US [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 21 Aug 01 w/attachment
(2) Page 13 entry dtd 7 Apr 98
(3) PERS-311 memo dtd 19 Nov 01
(4) 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 the enlisted performance evaluation reports for 16 November 1996 to 15 November 1997 and 16 November 1997 to 9 April 1998 and related material. Copies of the reports are at Tabs A and B, respectively. Petitioner also requested removal of unspecified service record page 13 ("Administrative Remarks") entries. Enclosure (2) is a page 13 entry dated 7 April 1998, indicating that Petitioner refused to sign the contested report for 16 November 1997 to 9 April 1998. In addition, Petitioner's record includes a page 13 entry dated 9 December 1996, a copy of which is at Tab C, regarding his having been placed on legal hold for investigation of charges which ultimately did not result in any punishment. Finally, Petitioner requested remedial consideration for promotion to pay grade E-7. The Board did not consider this request, since he may submit to the Navy Personnel Command (NPC) (PERS-81) a request for a special selection board on the basis of the corrective action indicated below. PERS-81 advises that the next special selection board is to convene in May 2002, and that requests for consideration by that board should be submitted by March 2002.

2. The Board, consisting of Messrs. Caron, Frankfurt, and Tew, reviewed Petitioner's allegations of error and injustice on 5 December 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 (3), the NPC office having cognizance over performance evaluation matters has commented to the effect that Petitioner's request to remove the contested performance evaluation reports has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting corrective action, specifically, removal of the contested reports and related material, including the page 13 entry dated 7 April 1998, and removal of the page 13 entry dated 9 December 1996.

The Board agrees with the advisory opinion at enclosure (3) in finding that the contested reports and related material, including the page 13 entry dated 7 April 1998, should be removed. They find that the page 13 entry dated 9 December 1996 regarding legal hold should be removed as well, because Petitioner ultimately received no punishment.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following two enlisted performance evaluation reports and related material, including the service record page 13 ("Administrative Remarks") entry dated 7 April 1998, concerning his refusal to sign the report for 16 November 1997 to 9 April 1998:

Date of Report	Reporting Senior	Period of Report	From	To
19 Nov 97	LCDR ██████████	USN	16 Nov 96	15 Nov 97
30 Mar 98	LCDR ██████████	USN	16 Nov 97	9 Apr 98

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 16 November 1996 to 9 April 1998 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 Petitioner's record be further corrected by removing the page 13 entry dated 9 December 1996, concerning legal hold.

d. That appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

e. 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.

f. 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.



JONATHAN S. RUSKIN
Acting Recorder

ROBERT D. ZSALMAN
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
Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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1610
PERS-311
19 November 2001

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

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

Subj: IC1 [REDACTED] USN [REDACTED]

Ref: (a) NPC ltr 1610 PERS-311 of 7 July 1999
(b) PERS-311 memo 1610 Pers-311 of 23 April 2001
(c) BCNR ltr BJB:ks Docket No: 01125-01 of 4 June 2001

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original performance evaluation for the period 16 November 1996 to 15 November 1997 and 16 November 1997 to 9 April 1998.

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. Both reports are signed by the member acknowledging the contents of each and his right to submit a statement. The member's statements and reporting senior's endorsement is reflected in his digitized record for the period 16 November 1996 to 15 November 1997. The member's statement for the period 16 November 1997 to 9 April 1998 is reflected in his digitized record. The reporting senior's endorsement was never received and PERS-311 filed reference (a) to reflected no endorsement from the reporting senior was received after several attempts.

b. Reference (b) recommended the report for the period ending 15 September 1996 be removed from the member's record and was approved per reference (c) on 4 June 2001. The board's action in removing the report ending 15 November 1996 was based on the determination that the reporting senior acted inappropriately.

c. Petty Officer [REDACTED] never signed the performance evaluation for the period 16 November 1997 to 9 April 1998. Although the member had tried several times to have a meeting with the Executive Officer to discuss the report, apparently no action was taken on the member's behalf.

d. It should also be noted that on 7 September 2001, the member received the Navy and Marine Corps Achievement Medal (Gold Star in Lieu of Forth Award) for professional achievement in the superior performance of his duties for the periods in question.

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e. The member proves the reports to be unjust or in error.

3. We recommend removal of the performance evaluations in question and the member's statement and reporting senior's endorsement.



Performance
Evaluation Branch