



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

BJG  
Docket No: 1970-02  
18 August 2003

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

Subj: MTZ (S) [REDACTED], USN, [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 4 Feb 02 w/attachments  
(2) MTCS ltr dtd 26 Jul 02  
(3) LTJG ltr dtd 13 Sep 02  
(4) PERS-311 memo dtd 24 Sep 02  
(5) PERS-811 memo dtd 17 Oct 02  
(6) Memo for record dtd 22 May 03  
(7) 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 his naval record be corrected by removing the enlisted performance evaluation report for 16 March to 1 June 2001. A copy of this report is in enclosure (1) at Tab A. He also requested reinstatement of the recommendation for his advancement to pay grade E-6. Finally, he requested advancement to E-6.

2. The Board, consisting of Ms. Davies and Messrs. McPartlin and Zsalman, reviewed Petitioner's allegations of error and injustice on 22 May 2003, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner received the contested evaluation report while serving in his current pay grade, E-5. It was submitted on the occasion of his transfer. He received marks of "5.0"

(Greatly Exceeds Standards), the highest of five, in "Professional Knowledge"; "4.0" (Above Standards), second highest, in "Quality of Work"; "3.0" (Meets Standards), third highest, in "Equal Opportunity," "Personal Job Accomplishment/Initiative" and "Leadership"; and "1.0" (Below Standards), the lowest, in "Military Bearing/Character" and "Teamwork." The comments section included the following justification for the two marks of "1.0":

[Petitioner] demonstrated significant unreliability in that he failed to inform his chain of command of personal problems which necessarily resulted in his transfer and unsuitability for submarine duty.

In "Promotion Recommendation," he was marked by himself in the "Significant Problems" category, the lowest possible. Finally, the reporting senior recommended against retention.

d. By letter dated 1 November 2001 (Tab B to enclosure (1)), Petitioner submitted a rebuttal statement to the contested evaluation report. This statement is not filed in his official record, since the reporting senior has not endorsed it. He stated that he informed his leading petty officer and leading chief petty officer of his personal problems on 24 May 2001, 12 days before 4 June 2001, the day his submarine was due to get underway. He noted that he was not given a copy of the contested report until 24 October 2001, and he asserted that he was not allowed to provide input. He explained that his spouse attended approximately 10 counseling sessions for anxiety during the year before May 2001. He admitted that it was his responsibility to keep his chain of command informed; however, as her symptoms were mild, he did not report her condition to his chain of command. He stated that his spouse had been unemployed since December 2000 because of injuries she had suffered in a car accident, which put a strain on their finances. He said that in early May 2001, his wife returned to work; but that on 23 May 2001, she was hospitalized for depression and panic attacks. He stated she was diagnosed with obsessive compulsive disorder and anxiety, and was placed on anti-depressant medication. He asserted that on 24 May 2001, he informed his leading petty officer and leading chief petty officer of his spouse's problems, the effect they were having on his finances and emotions, and his desire not to deploy so that he could take care of them. He said his intention was not to miss the entire deployment. He reported that on 29 May 2001, his leading chief petty officer informed him that he would have to make the deployment, however, the command had arranged for some of his fellow sailors' wives to check on his wife in his absence. Although he understood his chain of command's attempt to help, he said he was disturbed that his highly sensitive personal problems had been discussed with his peers. He stated that on 30 May 2001, his spouse's psychiatrist suggested that he should not deploy with his submarine, but should be present to support his wife. He said the leading chief petty officer later told him that the command's medical officer had advised the command there was no need for him to stay behind. He stated that the conflicting information he was receiving placed even greater stress on him. He reported that on 31 May 2001, he filed for bankruptcy. He alleged that on 1 June 2001, at a meeting with the executive officer (XO) and the leading chief petty officer, the XO said his wife was trying to manipulate the Navy, and that Petitioner was ruining his reputation at the command. He said the XO informed him that he was to make the deployment, and the XO advised Petitioner not

to take any further action. Petitioner stated that a chaplain he had consulted referred him to a counselor at the Family Services Center, and that Petitioner admitted to the counselor having had suicidal thoughts because of his stress and his belief he was receiving no help. He said he was then taken to the hospital and subsequently transferred off the submarine. He listed a number of accomplishments not documented in the contested evaluation report. Finally, he stated "In retrospect, I did not handle my problems exactly the way I should have, but my emotional state at the time had a significant impact on my judgement."

e. In his application, Petitioner contends that the evaluation report in question is wrong in stating he did not notify his command of his personal problems, because he did inform his leading petty officer and leading chief petty officer on 24 May 2001, before the submarine was scheduled to get underway on 4 June 2001. He alleges that the withdrawal of the recommendation for his advancement was punitive and unjustified. He states that the report was provided to him late, on 24 October 2001. He argues that his command improperly waited until the end of October 2001 to send the message withdrawing his recommendation for advancement. Finally, he says his leading chief and division officer both opposed the withdrawal of the recommendation for his advancement, to no avail.

f. Petitioner was eligible for advancement to E-6 from the March 2001 advancement examination, and he was frocked to E-6 in July 2001, after his detachment on 1 June 2001. The contested evaluation report ending 1 June 2001, reflecting that he was not recommended for advancement, was signed by the reporting senior on 7 July 2001; but it was not signed by Petitioner until 24 October 2001. The command prepared service record page 13 ("Administrative Remarks") entries dated 1 June 2001 (copies at Tab C to enclosure (1)), concerning the contested evaluation report and the withdrawal of the recommendation for Petitioner's advancement. On 23 October 2001, the command from which he had been detached sent a message withdrawing his recommendation for advancement, thereby precluding his advancement.

g. By letter at enclosure (2), Petitioner's leading chief petty officer confirmed that in late May 2001, Petitioner came to him regarding his wife's condition and the financial difficulties he was having. He said that Petitioner did not deploy because of the suicidal thoughts he had reported. Finally, he said Petitioner "left the ship in [sic] short notice and may have deserved performance marks that were lower than his [immediately preceding] evaluation, but in my opinion, he did not deserve a promotion recommendation of "Significant Problems" or a retention recommendation of "Not Recommended"."

h. By letter at enclosure (3), Petitioner's division officer stated that he had served with Petitioner for years, and that he considered Petitioner a reliable petty officer. He said that during May 2001, he became aware of some personal problems Petitioner was having, which resulted in his having been hospitalized as the submarine was getting underway. He said he did not believe Petitioner was trying to get out of deploying, and he said he did not recommend withdrawing Petitioner's advancement recommendation. He concluded that Petitioner is an asset to the Navy, and that he would gladly work with him again.

i. In correspondence attached as enclosure (4), the Navy Personnel Command (NPC) Performance Evaluation Branch (PERS-311) has commented to the effect that his request to remove the contested evaluation report should be denied. This advisory opinion includes the following:

...  
2...c. The report is procedurally correct. A performance evaluation is unique to the period being evaluated. The reporting senior is charged with commenting on the performance or characteristics of each member under his/her command and determines what material will be included in a performance evaluation. The contents and grades assigned on a performance evaluation are at the discretion of the reporting senior. The report represents the judgment and appraisal authority of the reporting senior. The reporting senior clearly explains in the comment section of the report his reason for writing the report as he did...

j. In correspondence attached as enclosure (5), PERS-811, the NPC office having cognizance over enlisted advancements, has commented to the effect that Petitioner's request to reinstate his advancement recommendation and grant him advancement should be denied, since PERS-311 recommended that the contested evaluation report remain in his record..

k. The memorandum for the record at enclosure (6) documents that PERS-811 advised that had Petitioner been advanced from the March 2001 E-6 examination, he would have received a time in rate date of 1 July 2001 and an effective date of 16 December 2001.

**CONCLUSION:**

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosures (4) and (5), the Board finds the existence of an injustice warranting complete relief. The supporting statements convince the Board that Petitioner did notify his chain of command of his personal problems, and that withdrawing his recommendation for advancement was punitive. The Board finds that he would have been advanced to E-6, had his recommendation for advancement not been withdrawn. In light of the memorandum for the record, the Board finds he would have been advanced with a time in rate date of 1 July 2001 and an effective date of 16 December 2001. In view of the above, the Board recommends the following corrective action.

**RECOMMENDATION:**

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period From	of	Report To
7 Jul 01		16 Mar 01		1 Jun 01

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report 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 report.

c. That Petitioner's record be corrected further by removing the service record page 13 ("Administrative Remarks") entries dated 1 June 2001, concerning the removed report and the withdrawal of the recommendation for Petitioner's advancement to E-6.

d. That Petitioner's record be further corrected by showing he was advanced to E-6 with a time in rate of 1 July 2001 and an effective date of 16 December 2001.

e. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

f. That any material or entries 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.

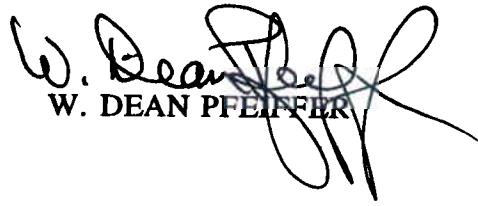
g. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. 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.

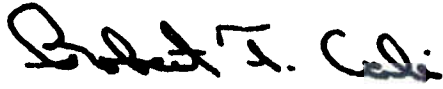
ROBERT D. ZSALMAN  
Recorder

  
  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:

  
9-8-03



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1610  
PERS-311  
24 September 2002

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

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

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 March 01 to 1 June 01.

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 his right to submit a statement. The member indicated he did desire to submit a statement. PERS-311 has not received the member's statement or the reporting senior's endorsement. The member provided a copy of his statement with his petition; however, it is not suitable for filing, as it is not endorsed by the reporting senior.

b. The report in question is a Detachment of Individual/Regular report.

c. The report is procedurally correct. A performance evaluation is unique to the period being evaluated. The reporting senior is charged with commenting on the performance or characteristics of each member under his/her command and determines what material will be included in a performance evaluation. The contents and grades assigned on a performance evaluation are at the discretion of the reporting senior. The report represents the judgment and appraisal authority of the reporting senior. The reporting senior clearly explains in the comment section of the report his reason for writing the report as he did.

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

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



Performance  
Evaluation Branch





DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1430  
Ser 811/451  
17 Oct 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF

ME [REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1430.16E

Encl: (1) BCNR file #01970-02

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.
2. Petty Officer [REDACTED] as requested removal of his performance evaluation for the period of 16 March 2001 to 1 June 2001 and reinstatement of his advancement to MT1.
3. Based on the comments contained in PERS-311 memorandum of 24 September 2002, the evaluation in question is valid and a favorable endorsement can not be granted regarding this petition.

[REDACTED]

By direction

DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)  
PERFORMANCE SECTION  
2 NAVY ANNEX, SUITE 2432  
WASHINGTON, DC 20370-5100  
TELEPHONE: (703) 614-2293 OR DSN 224-2293  
FACSIMILE: (703) 614-9857 OR DSN 224-9857

MEMORANDUM FOR THE RECORD

DATE: 22MAY03

DOCKET NO: 1970-02

PETITIONER (PI [REDACTED] USN

PARTY I CALLED: [REDACTED]

TEL #: N/A

WHAT I SAID: I ASKED CHIEF [REDACTED] WHAT TIR AND EFF DATE PET WOULD HAVE RECEIVED HAD HE BEEN ADVANCED BY THE MAR01 E-6 EXAM ADVANCEMENT CYCLE.

WHAT PARTY SAID: [REDACTED] INFORMED ME THAT PET WOULD HAVE RECEIVED A TIR DATE OF 1JUL01, AND AN EFF DATE OF 16DEC01.

*B. George*  
BRIAN J. GEORGE