



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

BJG
Docket No: 5262-99
1 February 2001

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

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

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

Encl: (1) DD Form 149 dtd 10 Aug 99 w/attachments
(incl Subject's fax transmissions of 22 Dec 99 and 28 Jan 00)
(2) PERS-311 memos dtd 4 Apr 00, 22 Aug 00 and 24 Jan 01
(3) PERS-852 memo dtd 26 Oct 99 and
PERS-85 memo dtd 15 Sep 00
(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 three enlisted performance evaluation reports for 16 July to 3 November 1998, 4 November 1998 to 3 February 1999, and 4 February to 3 May 1999. Copies of these reports are at Tabs A through C respectively. She further requested retroactive advancement to pay grade E-4, hospitalman third class (HM3), from the September 1998 (Cycle 160) advancement examination.

2. The Board, consisting of Messrs. Harrison and Schultz and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 25 January 2001, and pursuant to its regulations, determined that the partial 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. All three of the contested reports were "special" reports. Petitioner contended that the report for 16 July to 3 November 1998 was invalid because it was submitted in error. She provided a letter from her reporting senior (second supporting document at enclosure (1)) indicating that this report should not have been submitted; that she was not advanced because

of this report; and that she should be retroactively advanced to third class. Petitioner argued that the other two contested reports should be removed as they were written because of the first report.

c. The report for 16 July to 3 November 1998 (at Tab A) states it was submitted on the occasion of Petitioner's nonjudicial punishment (NJP) on 3 November 1998. Block 36 ("Military Bearing/Character") was marked "1.0" (lowest of five possible), and blocks 45 and 46 ("Promotion Recommendation") reflected "Significant Problems" (lowest of five possible). The reporting senior submitted a letter-supplement dated 6 August 1999 (also at Tab A) stating the mark in block 36 is changed to "2.0" (second lowest) and the promotion recommendation to "Promotable" (third best). The reason given for these changes was "administrative oversight."

d. The report for 4 November 1998 to 3 February 1999 (at Tab B) states it was submitted to indicate progress in block 36 after NJP on 3 November 1998. Block 36 was marked "2.0"; block 45 ("Promotion Recommendation - Individual") showed "Progressing" (second lowest) and block 46 ("Promotion Recommendation - Summary") showed a "1" (representing Petitioner) under "Progressing" and a "0" under each of the four other promotion recommendations. The reporting senior submitted a letter-supplement dated 13 October 1999 (also at Tab B). Paragraph 2.a states the mark in block 36 is changed to "3.0" (third best) by reason of "administrative oversight"; paragraphs 2.b and 2.c indicate blocks 45 and 46 are changed to show Petitioner marked "Promotable"; and paragraph 3 ("Promotion Recommendation Summary Group Information") states "Necessary modifications to report have been submitted."

e. The report for 4 February to 3 May 1999 (Tab C) also states it was submitted to indicate progress in block 36 after NJP on 3 November 1998. Block 36 was marked "3.0" and Petitioner received a promotion recommendation of "Promotable." The record reflects no letter-supplement was submitted for this report.

f. Enclosure (2) comprises three advisory opinions from the Navy Personnel Command (NPC) office with cognizance over Navy enlisted performance evaluation reports. The first opinion recommended that the report for 16 July to 3 November 1998 (at Tab A) be "replaced with the amended report"; and that given Petitioner's "misconduct and other findings of her 3 November 1998 NJP," no relief be granted regarding the other two reports at issue. As the reporting senior actually submitted no "amended report," it is understood that the intent of this recommendation was to amend the original report for 16 July to 3 November 1998 to reflect the changes shown in the letter-supplement dated 6 August 1999 (also at Tab A) (to include changing the promotion recommendation to "Promotable"). The second opinion recommended that the report for 4 November 1998 to 3 February 1999 (at Tab B) be modified by changing the promotion recommendation from "Progressing" to "Promotable," as "Progressing" is an invalid entry with "Promotable" on the previous report, and the letter-supplement dated 13 October 1999 (also at Tab B) indicated the mark should be "Promotable." The final opinion recommended that the report for 16 July to

3 November 1998 be removed, together with the letter-supplement dated 6 August 1999, on the ground that the report does not meet the criteria for a special report and is therefore invalid. This opinion adhered to the previous recommendation that the report for 4 November 1998 to 3 February 1999 be changed to "Promotable."

g. Enclosure (3) comprises two advisory opinions from the NPC office with cognizance over Navy enlisted advancements. The first recommended denying Petitioner's request for retroactive advancement on the basis that her advancement examination score from Cycle 160 had been invalidated by her command's action in withdrawing their recommendation for her advancement. The second opinion recommended that her request be approved, stating that she would have been selected for advancement from Cycle 160, provided the report for 4 November 1998 to 3 February 1999 had been changed to "Promotable." This opinion recommended that she be advanced to HM3 effective 16 June 1999, with a time in rate date of 1 January 1999. [On 1 February 2001, the cognizant office verified that their conclusions would be the same, regardless of whether the report for 16 July to 3 November 1998 were changed to "Promotable" or removed.]

h. Exhibit P-2 of Bureau of Naval Personnel Instruction 1610.10 shows that paragraph 3 ("Promotion Recommendation Summary Group Information") of a letter-supplement is to state "I certify that no modifications to reports on other members are required." when no change to the promotion recommendation is being made.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of the last opinions at enclosures (2) and (3), the Board finds the existence of an injustice warranting partial relief, specifically, removal of the report for 16 July to 3 November 1998 and the letter-supplement dated 6 August 1999; amendment of the report for 4 November 1998 to 3 February 1999 to show a promotion recommendation of "Promotable," with corresponding revision of the letter-supplement dated 13 October 1999; and correction of Petitioner's record to reflect her advancement to HM3 with an effective date of 16 June 1999 and a time in rate date of 1 January 1999.

The Board finds the report for 4 November 1998 to 3 February 1999, as amended, and the report for 4 February to 3 May 1999 should not be removed. Contrary to Petitioner's allegation, the Board finds these reports were submitted because of her NJP, and not because of the first contested report which was improperly submitted for the purpose of reporting the NJP.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and the letter-supplement dated 6 August 1999:

Date of Report	Reporting Senior	Period of Report	
		From	To
1 Dec 98	[REDACTED], USN	16 Jul 98	3 Nov 98

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 naval record be corrected further by modifying as follows her enlisted performance evaluation report for 4 November 1998 to 3 February 1999, dated 8 March 1999 and signed by Captain M. L. Houser, USN:

- (1) Block 45 ("Promotion Recommendation - Individual"): Change from "Progressing" to "Promotable."
- (2) Block 46 ("Promotion Recommendation - Summary"): Change the "1" under "Progressing" to "0," and the "0" under "Promotable" to "1."

d. That Petitioner's naval record be corrected further by modifying as follows the evaluation report letter-supplement dated 13 October 1999, concerning the enlisted performance evaluation report for 4 November 1998 to 3 February 1999:

- (1) Delete paragraphs 2.b and 2.c.
- (2) Change paragraph 3 from "Necessary modifications to report have been submitted" to "I certify that no modifications to reports on other members are required."

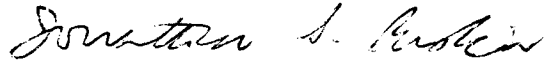
e. That Petitioner's record be corrected further to show she was advanced to HM3 (pay grade E-4) effective 16 June 1999, with a time in rate date of 1 January 1999.

f. That any material 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.

h. That the remainder of Petitioner's request be denied.

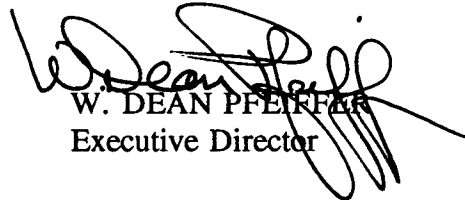
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's 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
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1430
Ser 852/357
26 Oct 99

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
[REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1430.16D
(b) PERSUPP DET PORTSMOUTH VA msg 121430Z JAN 99
(c) COMNAVPERSCOM MILLINGTON TN msg 200936Z JAN 99

Encl: (1) Docket #04555-99
(2) NAVPERS 1070/613 dtd 22 Dec 98
(3) COMNAVMEDCENPTS ltr 1610 Ser 0206/807794
dtd 14 Dec 98

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.

2. Reference (b) requested that HN [REDACTED] September 1998 (Cycle 160) examination be invalidated and that her recommendation for advancement had been withdrawn in accordance with paragraph 819.2 of reference (a). Enclosures (2) and (3) verify compliance with paragraph 819.2 of reference (a) and are signed by Director, Naval Medical Center, Portsmouth and HN [REDACTED] cember 1998.

3. Reference (c) withdrew the advancement and invalidated the September 1998 (Cycle 160) Examination. Reference (c) advised that a withdrawal of the members recommendation terminates the advancement authority for Cycle 160 with no administrative recourse.

[REDACTED SIGNATURE]

By direction



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

5262-99
1610
PERS-311
4 April 2000

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

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

Subj: HN [REDACTED], USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her performance evaluation for the following periods:

16 July 1998 to 3 November 1998
4 November 1998 to 3 February 1999
4 February 1999 to 3 May 1999

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

a. A review of the member's headquarters revealed the member was an E-3 at the time of the reports. Since E-4 and below reports are not filed in the member's headquarters record, our comments are based on uncertified copies of the reports provided with the member's petition. The member signed all three reports acknowledging the contents of each and her right to submit a statement. The member indicated she did not desire to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the reports to submit a statement.

b. The performance evaluation for the period 16 July 1998 to 3 November 1998 is a Special/Regular report prepared on the occasion of the member receiving Non-Judicial Punishment. The reporting senior submitted an Evaluation Report Letter Supplement on 6 August 1999. The letter supplement changes block-36 from 1.0 to 2.0, block-45, the member's promotion recommendation from "Significant Problems to Promotable", and block-46, Summary Group from "4 Significant Problems to 4 Promotables".

c. The performance evaluation for the period 4 November 1998 to 3 February 1999 is a Special/Regular report prepared to document the member's progress after NJP. The reporting senior submitted an Evaluation Report Letter Supplement on 13 October 1999. The letter supplement changes block-36 from 2.0 to 3.0, block-45, the member's promotion

recommendation from "progressing to promotable", and block 46, Summary group from "1 progressing to 1 promotable".

d. The performance evaluation for the period 4 February 1999 to 3 May 1999 is a Special/Regular report prepared to document the member's progress after NJP.

e. Submission of the letter supplements was at the discretion of the reporting senior acknowledging the errors in the original reports.

f. The reporting senior states the performance evaluation has been amended and forwarded to Navy Personnel Command. There is no record of PERS-311 receiving the report. However, we would not file the report in the member's record as stated in paragraph 2.a.

g. The member does not prove the reports to be unjust or in error.

3. We recommend partial approval of the member's petition.

a. We recommend the original report for the period 16 July 1998 to 3 November 1998 be replaced with the amended report.

b. Given I [REDACTED] misconduct and other findings of her 3 November 1998 NJP, we recommend retention of the reports for the periods 4 November 1998 to 3 February 1999 and evaluation report letter supplement, and 4 February 1999 to 3 May 1999.

[REDACTED]

Head, Performance
Evaluation Branch



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

5262-99
1610
PERS-311
22 August 2000

AMENDMENT

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

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

Subj: HN [REDACTED], U [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her performance evaluation for the following periods:

16 July 1998 to 3 November 1998
4 November 1998 to 3 February 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 member was an E-3 at the time of the reports. Since E-4 and below reports are not filed in the member's headquarters record, our comments are based on uncertified copies of the reports provided with the member's petition. The member signed all three reports acknowledging the contents of each and her right to submit a statement. The member indicated she did not desire to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the reports to submit a statement.

b. The performance evaluation for the period 16 July 1998 to 3 November 1998 gave HN [REDACTED] promotion recommendation of "Significant Problems". On 6 August 1999 the reporting senior submitted an Evaluation Report Letter Supplement changing the member's promotion recommendation from "Significant Problems" to "Promotable."

c. The performance evaluation for the period 4 November 1998 to 3 February 1999 gave HN [REDACTED] promotion recommendation of "Progressing". The promotion recommendation of "Progressing" is an invalid entry as the member had a promotion recommendation of "Promotable" on her previous performance evaluation. On 13 October 1999 the reporting senior submitted an Evaluation Report Letter Supplement changing the member's promotion recommendation from "Progressing" to "Promotable".

d. Submission of the letter supplements was at the discretion of the reporting senior acknowledging the errors in the original reports.

3. Recommend the member's promotion recommendation be changed from "Progressing" to "Promotable" on the performance evaluation for the period 4 November 1998 to 3 February 1999.



Head, Performance
Evaluation Branch

5262-99



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

1610
PERS-311
24 January 2001

SECOND AMENDMENT

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

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

Subj: HN [REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her performance evaluation for the following periods:

16 July 1998 to 3 November 1998
4 November 1998 to 3 February 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 member was an E-3 at the time of the reports. Since E-4 and below reports are not filed in the member's headquarters record, our comments are based on uncertified copies of the reports provided with the member's petition. The member signed all three reports acknowledging the contents of each and her right to submit a statement. The member indicated she did not desire to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the reports to submit a statement.

b. The performance evaluation for the period 16 July 1998 to 3 November 1998 is a Special/Regular report. Per reference (a), Annex D-9, the report does not meet the criteria for a special report and is an invalid report.

c. The performance evaluation for the period 4 November 1998 to 3 February 1999 gave HN [REDACTED] promotion recommendation of "Progressing". The promotion recommendation of "Progressing" is an invalid entry as the member had a promotion recommendation of "Promotable" on her previous performance evaluation. On 13 October 1999 the reporting senior submitted an Evaluation Report Letter Supplement changing the member's promotion recommendation from "Progressing" to "Promotable".

5262-99

d. Submission of the letter supplements was at the discretion of the reporting senior acknowledging the errors in the original reports.

3. Recommend the performance evaluation for the period 16 July 1998 to 3 November 1998 be removed from the member's record with the reporting senior's Evaluation Report Letter Supplement dated 6 August 1999 and recommend the member's promotion recommendation be changed from "Progressing" to "Promotable" on the performance evaluation for the period 4 November 1998 to 3 February 1999.



Head, Performance
Evaluation Branch



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

026299

1430
Ser 85/1049
15 Sep 00

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
[REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1430.16D

Encl: (1) BCNR file #05262-99

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending approval.

2. Provided [REDACTED]'s evaluation of 4 November 1998 to 3 February 1999 had been changed to a recommendation mark of promotable, as recommended by PERS-311 memo 1610 of 22 August 2000, she would have been selected for advancement to HM3 as a result of participation in examination cycle 166. It is recommended her records be changed to reflect advancement to HM3 effective 16 June 1999 with a time in rate of 1 January 1999.

[REDACTED]
By direction