



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

BJG
Docket No: 7954-99
6 February 2002

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

Subj:
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Forms 149 dtd 15 Dec 99, 26 Feb 00,
and 28 Apr 00, each w/attachments
(2) PERS-311 memo dtd 5 Apr 00
(3) PERS-4415 memo dtd 26 Apr 00 w/encls
(4) PERS-311 memo dtd 27 Sep 00
(5) PERS-06L1 memo dtd 7 Jun 01
(6) Dept of Psych, NMC, Portsmouth, VA ltr dtd 30 Oct 01
(7) Subject's naval record

1. Pursuant to 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 fitness reports for 20 February to 13 October 1999 and 14 October 1999 to 7 January 2000, copies of which are in enclosure (1) at Tabs A and B, and the mental health evaluation dated 21 July 1999, a copy of which is in enclosure (1) at Tab C. He also requested removal of the Performance Appraisal Report for 25 September 1998 to 6 January 2000, the Quality Assurance Investigation for 16 to 18 August 1999, and the plan for supervision dated 8 February 2000. These requests were not considered, as these documents are not part of his official military personnel record. Finally, he requested a specific reassignment. This request was not considered either, as he has been reassigned as he requested.

2. The Board, consisting of _____ reviewed Petitioner's allegations of error and injustice on 1 February 2002, and pursuant to its regulations, determined that the limited 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), the Navy Personnel Command (NPC) Performance Evaluation Branch (PERS-311), the office having cognizance over fitness report matters, has commented to the effect that Petitioner's request to remove his fitness report for 20 February to 13 October 1999 should be denied.

c. In correspondence attached as enclosure (3), the NPC Medical Department Officer Distribution Branch (PERS-4415) has commented to the effect that Petitioner has been reassigned as he requested, and has recommended that the remainder of his request be denied.

d. In correspondence attached as enclosure (4), PERS-311 has commented to the effect that Petitioner's request to remove his fitness report for 14 October 1999 to 7 January 2000 should be denied.

e. In correspondence attached as enclosure (5), the NPC Office of Legal Counsel (PERS-06L1) has commented to the effect that Petitioner's request to remove the contested fitness reports should be denied.

f. In correspondence attached as enclosure (6), the Department of Psychiatry, Naval Medical Center (NMC), Portsmouth, Virginia, has commented to the effect that Petitioner's request to remove his mental health evaluation has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinion from the Department of Psychiatry, NMC, Portsmouth, Virginia at enclosure (6), the Board finds the existence of an injustice warranting limited relief, specifically, removal of the contested mental health evaluation. They also agree with the advisory opinions at enclosures (2) and (4) from PERS-311 and the opinion at enclosure (5) from PERS-06L1 in concluding that the contested fitness reports should stand. They are unable to find these reports were based on the mental health evaluation, as opposed to other sources of information. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

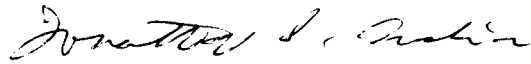
a. That Petitioner's naval record, to include his medical record, be corrected by removing therefrom the mental health evaluation dated 21 July 1999.

b. 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.

c. 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.

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

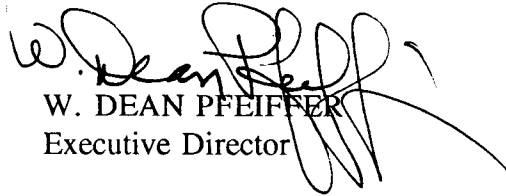
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's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

