



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

HD:hd
Docket No: 05323-01
14 February 2002

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

Subj: LCDR [REDACTED] USN, [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 26 Jun 01 w/attachments
(2) NAVIG N66 memo dtd 29 Dec 99 w/enclosures
(3) PERS-00H memo dtd 13 Aug 01
(4) PERS-311 memo dtd 20 Nov 01
(5) NPC P801C memo dtd 21 Dec 01
(6) 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 fitness report for 1 November 1997 to 14 September 1998, a copy of which is at Tab A. She also requested removal of her failures of selection by the Fiscal Year (FY) 01 and 02 Line Commander Selection Boards. In addition, she requested that she be granted a special selection board for FY 01 on the basis that her record before the regular board improperly included the contested fitness report.

2. The Board, consisting of Messrs. Frankfurt and Schultz and Ms. Gilbert, reviewed Petitioner's allegations of error and injustice on 14 February 2002, 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. The contested fitness report is not adverse: the comments are entirely favorable, and the reporting senior marks Petitioner "Early Promote," the highest recommendation for promotion. However, the report includes only one mark of "5.0" (highest); it reflects four marks of "4.0" (second best) and one of "3.0" (third best).

c. Petitioner contends that her reporting senior took retributive action against her and others in the form of unwarranted low performance marks. She alleges that the contested fitness report was in reprisal for her testimony in the investigation of a complaint against the reporting senior under Article 138, Uniform Code of Military Justice. She further alleges that she was the victim of racial bias.

d. In support of her allegations, Petitioner cites the command climate assessment requested by the Naval Inspector General (NAVIG), at enclosure (2). In their cover letter at enclosure (2), NAVIG states "The command climate, under the [reporting senior]'s leadership, was assessed as being well below par, which will support petitioners' claims that many were unfairly treated in the evaluation process."

e. In correspondence attached as enclosure (3), the Navy Personnel Command (NPC) office having cognizance over equal opportunity matters has recommended that her request be granted in full, to include a special selection board.

f. In correspondence attached as enclosure (4), the NPC office having cognizance over fitness report matters has commented to the effect that the contested fitness report should be removed on the basis of the information at enclosure (2).

g. In correspondence attached as enclosure (5), the NPC office having cognizance over active duty promotions has commented to the effect that if Petitioner's request to remove the contested fitness report is approved, her request to remove her failures of selection for promotion should be approved as well, and she should be granted a special selection board for FY 01. They stated it is reasonable to consider that the fitness report at issue may have been influential in the board's deliberations and may have affected the competitiveness of Petitioner's record among her peers.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2), (3), (4) and (5), the Board finds the existence of an injustice warranting partial relief, specifically, removal of the contested fitness report and Petitioner's failures of selection before the FY 01 and 02 Line Commander Selection Boards.

Despite the NPC recommendations, in enclosures (3) and (5), for a special selection board, the Board finds that Petitioner's request for a special selection board should be denied. In this regard, they note that the regular FY 03 Line Commander Selection Board is imminent, scheduled to convene on 19 February 2002. Further, they find that Petitioner's consideration by a regular selection board, with a corrected fitness report record and status as an officer who has not failed of selection for promotion, will provide her adequate relief.

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 fitness report and related material:

Date of Report	Reporting Senior	Period of Report From	To
98Sep14	CAPT ██████████ USN	97Nov01	98Sep14

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 the 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 so that she will be considered by the earliest possible selection board convened to consider officers of her category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

d. 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.

e. 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.

f. 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.

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.



FR W. DEAN PFEIFFER
Executive Director



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

1610
PERS-00H/247
13 Aug 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 17 Jul 01
(b) OPNAVINST 5354.1E Navy EO Manual

Encl: (1) BCNR File 05323-01

1. Reference (a) requested an advisory opinion in response to Lieutenant Commander [REDACTED]'s request to delete from her record the fitness report from 01 Nov 97 through 14 Sep 98, removal of "failure to select" from her official record, and to be considered by a special selection board for promotion to Commander, due to discrimination by Captain [REDACTED] her Commanding Officer at Naval Telecommunications Master Station (NTCMS), Honolulu, HI. Enclosure (1) is returned.

2. A review of Lieutenant Commander [REDACTED]'s package reveals that a Navy Inspector General (IG) investigation, including a Command Climate Assessment report, was completed in August 1999. In that report (enclosure 10 to reference (a)), numerous problems with the Commanding Officer were cited and the command climate at NTCMS was rated "unsatisfactory." While "no clear instances of gender or racial discrimination" were found, another Navy IG memorandum (enclosure 14 to reference (a)) written to the Board for Correction of Naval Records (BCNR) states:

"A significant number of officers, who were evaluated by the Commanding Officer during her three year assignment, may petition for removal of their FITREPS... The command climate under the CO's leadership, was assessed as being well below par, which will support petitioners' claims that many were unfairly treated in the evaluation process."

3. Based on that assessment, I recommend Lieutenant Commander [REDACTED] fitness report for the requested period and the

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED]

"failure to select" be removed from her record, and that she be considered by a Special Selection Board for promotion to the grade of Commander.

[REDACTED]

Director, Navy Equal
Opportunity Division
(PERS-00H)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
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1610
PERS-311
20 November 2001

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

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

Subj: LCDR [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) DON Inspector General's letter 50441 Ser N6/1582 of 9 September 1999

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her original fitness report for the period 1 November 1997 to 14 September 1998.

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

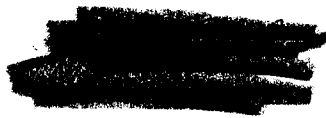
a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and her right to submit a statement. The member did not desire to submit a statement.

b. Lieutenant Commande [REDACTED] request's the removal of her fitness report because of the appearance of racial bias and discrimination. Evaluating a subordinate officer's performance and making recommendations concerning promotion and assignment are the responsibilities of the reporting senior. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decisions, and whether the reporting senior actions were the result of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; she must provide evidence to support the claim. I believe Lieutenant Commande [REDACTED] done so.

c. Based on reference (b), we believe the fitness report for the period 1 November 1997 to 14 September 1998 should be removed from Lieutenant Commande [REDACTED] record.

d. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report in question.



Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
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5420
P801C/0309

DEC 21 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LCDR [REDACTED] USN, [REDACTED]

Ref: (a) PERS-311 Memo of 20 Nov 01

Encl: (1) BCNR File 05323-01

1. Enclosure (1) is returned, recommending approval of LCDR [REDACTED] request for removal of her failures of selection resulting from the FY-01 and FY-02 Active-Duty Commander Line Promotion Selection Boards and that she be granted a FY-01 special promotion selection board.

2. Reference (a) recommended removal of the 1 November 1997 to 14 September 1998 fitness report. It is reasonable to consider that the presence of this fitness report may have been influential in the board's deliberations and may have effected the competitiveness of [REDACTED]'s record amongst her peers.

[REDACTED]

BCNR Liaison, Active and Reserve
Officer Career Progression
Division