



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

JSR
Docket No. 12160-09
28 January 2010

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 3 Aug 09 w/attachments
(2) HQMC MMER/PERB memo dtd 18 Nov 09
(3) HQMC MMOA-4 memo dtd 30 Nov 09
(4) HQMC MMOA-4 memo dtd 25 Jan 10
(5) Memo for Record dtd 27 Jan 10
(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 May to 1 October 2007, a copy of which is at Tab A. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of this report. Petitioner also requested modifying the fitness report for 2 October 2007 to 14 March 2008, a copy of which is at Tab B, by removing section K (reviewing officer's marks and comments). She further requested removal of her failure of selection before the Fiscal Year (FY) 2009 Chief Warrant Officer 3 (CWO3) Selection Board and remedial consideration for that promotion board. The Board did not consider her request for remedial consideration, as she has been selected and promoted to CWO3. Finally, she impliedly requested that her record be corrected to show the lineal position, date of rank and effective date in the grade of CWO3 she would have been assigned had she been selected for promotion to that grade by the FY 2009 CWO3 Selection Board, vice the FY 2010 CWO3 Selection Board. She was promoted to CWO3 with a date of rank and effective date of 1 December 2009.

2. The Board, consisting of _____ and _____, reviewed Petitioner's allegations of error and

injustice on 28 January 2010, 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 (2) shows the HQMC PERB directed removing the contested fitness report for 1 May to 1 October 2007 and commented to the effect that Petitioner's request to modify the report for 2 October 2007 to 14 March 2008 should be denied.

c. For the FY 2010 CWO3 Selection Board by which Petitioner was selected, she had an uncorrected fitness report record and status as an officer who had failed of selection for promotion.

d. In correspondence at enclosures (3) and (4), the HQMC Officer Counseling and Evaluation Section has commented to the effect that Petitioner's express request to strike her failure of selection for promotion and her implied request to backdate her promotion have merit and warrant favorable action.

e. Enclosure (5) shows the HQMC Promotion Branch has advised that 1 August 2009 is the date of rank and effective date Petitioner would have been assigned, had she been promoted pursuant to selection by the FY 2009 CWO3 Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) through (4), the Board finds the existence of an injustice warranting the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she did not fail of selection by the FY 2009 CWO3 Selection Board.

b. That her record be corrected further to show her date of rank and effective date in the grade of CW03 as 1 August 2009, vice 1 December 2009; and that her lineal precedence be adjusted accordingly.

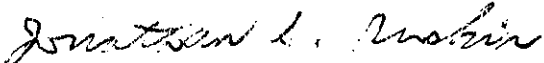
c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. 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.


e. That the remainder of her request be denied.

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


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.


W. DEAN PFEIFFER
Executive Director