



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

JSR
Docket No. NR5809-13
24 July 2014

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 28 May 13 w/attachments
(2) HQMC MIQ memo dtd 11 Feb 14
(3) HQMC JAM memo dtd 8 May 14
(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 all service record page 11 ("Administrative Remarks (1070)") entries recommending against her promotion to her current grade of lance corporal. The pertinent documents in her Official Military Personnel File are a page 11 entry dated 20 January 2012 (February 2012 promotion period) and her rebuttal dated 20 January 2012, entry dated 23 January 2012 (November 2011 promotion period) and undated rebuttal, entry dated 23 January 2012 (December 2011 promotion period) and undated rebuttal, entry dated 23 January 2012 (January 2012 promotion period and undated rebuttal, entry dated 23 March 2012 (April 2012 promotion period) and rebuttal dated 15 June 2012, entry dated 23 May 2012 (March 2012 promotion period) and rebuttal dated 23 May 2012, entry dated 17 July 2012 (August 2011 promotion period) and undated rebuttal, entry dated 17 July 2012 (September 2011 promotion period) and undated rebuttal, and entry dated 17 July 2012 (October 2011 promotion period) and undated rebuttal. Copies of the pertinent documents are at Tab A.

2. The Board, consisting of Messrs. George, Hicks and Swarens, reviewed Petitioner's allegations of error and injustice on 24 July 2014, 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. Petitioner contends that the entries at issue should be removed because the recommendations against her promotion were by reason of her failure to qualify on the rifle range, her failure was the result of her pregnancy, and her command failed to make reasonable accommodations on the rifle range in view of her pregnancy.

c. In enclosure (2), MIQ, the Headquarters Marine Corps (HQMC) office with cognizance over page 11 entries, has commented to the effect that Petitioner's request warrants only partial relief, specifically, removing the three contested page 11 entries dated 23 January 2012, because she was not given a chance to make a statement regarding these entries since the promotion periods had already passed. MIQ concluded that the entries dated 20 January and 23 March 2012 were proper, noting that the entries do not mention failure to qualify on the rifle range or Petitioner's pregnancy. MIQ did not address the entries dated 23 May or 17 July 2012.

c. In enclosure (3), JAM, the HQMC Judge Advocate Division, Military Justice Branch commented to the effect that all the entries at issue should be removed, because the entries dated 23 January, 23 May and 17 July 2012 were improperly backdated, and the entries dated 20 January and 23 March 2012 were issued after Petitioner should have been promoted on 1 May 2011. JAM also recommended correcting Petitioner's record to show she was promoted to lance corporal effective 1 May 2011, rather than 1 May 2012. She did not request this relief, and paragraph 2600 of Marine Corps Order P1400.32D, concerning remedial consideration for promotion to private first class through sergeant, provides that "All requests for remedial consideration will be submitted by the command, to the CMC [Commandant of the Marine Corps] (MMPR-2) for approval...No request for remedial promotion should be submitted directly to the Board for Correction of Naval Records (BCNR)."

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the recommendation of enclosure (2) to grant only partial relief, and especially in light of enclosure (3), the Board finds an error warranting removal of all the documents pertaining to the recommendation against Petitioner's promotion to lance corporal. The Board finds that if this recommendation is approved, and if Petitioner desires backdating her promotion to lance corporal on the basis of that action, she may have her command submit a request for remedial consideration to CMC (MMPR-2). In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following:

- (1) Service record page 11 ("Administrative Remarks (1070)") entry dated 20 January 2012 (February 2012 promotion period) and rebuttal dated 20 January 2012.
- (2) Page 11 entry dated 23 January 2012 (November 2011 promotion period) and undated rebuttal.
- (3) Page 11 entry dated 23 January 2012 (December 2011 Promotion period) and undated rebuttal.
- (4) Page 11 entry dated 23 January 2012 (January 2012 promotion period) and undated rebuttal.
- (5) Page 11 entry dated 23 March 2012 (April 2012 promotion period) and rebuttal dated 15 June 2012.
- (6) Page 11 entry dated 23 May 2012 (March 2012 promotion period) and rebuttal dated 23 May 2012.
- (7) Page 11 entry dated 17 July 2012 (August 2011 promotion period) and undated rebuttal.
- (8) Page 11 entry dated 17 July 2012 (September 2011 promotion period) and undated rebuttal.

(9) Page 11 entry dated 17 July 2012 (October 2011 promotion period) and undated rebuttal.

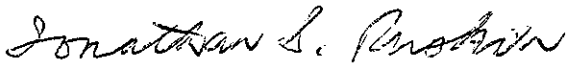
This is to be accomplished by physically removing the page 11's on which the entries to be removed appear and the rebuttals, or completely obliterating the entries and rebuttals so they cannot be read, rather than merely lining through them.

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.

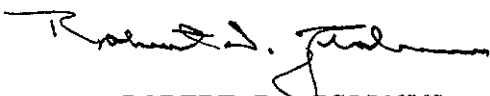
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

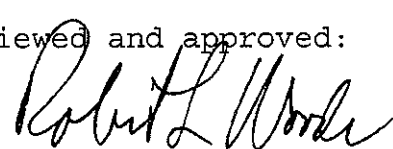
ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

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


ROBERT D. ZSALMAN
Acting

Reviewed and approved:

 8/4/14
ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
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