



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

[REDACTED]
Docket No. 9007-16
FEB 06 2017

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

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] MSC, USN, [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) BUPERSINST 1610.10C (EVALMAN)
(c) ASN (M&RA) ltr dtd 13 May 2015
(d) Chief, BUMED ltr 5819 Ser M00J/039 dtd 11 May 2015
(e) JAGMAN, Chapter III

Encl: (1) DD Form 149 w/attachments
(2) NPC memo 1610 PERS-32 dtd 6 Dec 16
(3) NPC memo 5420 PERS-80 dtd 13 Dec 16
(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 her revised fitness reports ending 13JAN31, 14JAN31, 15JAN31, Failures of Selection (FOSs) by the Fiscal Year (FY) 16 and 17 Active Duty Lieutenant Commander Staff Corps Promotion Selection Board (LCDR Staff Corps PSB) from her Official Military Personnel File (OMPF), and be granted a Special Selection Board (SSB).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 January 2017 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. Additionally, the Board considered enclosures (2) and (3), advisory opinions from Navy Personnel Command, your rebuttal statement to enclosure (2) dated 21 December 2016, and Deputy Chief Letter of Support dated 20 January 2017.

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 accordance with reference (d) and subsequent concurrence of reference (c), the Commanding Officer (CO) of Naval Medical Research Center (NMRC) was directed to assume reporting senior (RS) authority by the Immediate Superior in Command (ISIC) for the Petitioner, in accordance with reference (b). The ISIC rewrote the two fitness reports ending 13JAN31 and 14JAN31 as directed per enclosure (3). These revised reports were submitted to Navy Personnel Command for inclusion into the Petitioner's OMPF. This action was completed after the FY16 LCDR Staff Corps PSB convened. The reports were signed by the Petitioner acknowledging the contents and her right to submit a statement. At that time, Petitioner indicated she did not intend to make a statement. Petitioner received her first FOS from the FY16 LCDR Staff Corps PSB.

c. In June of 2014, Petitioner exercised her rights to file a Uniformed Code of Military Justice (UCMJ) Article 138 Complaint of Wrongs against her Commanding Officer (CO) at Naval Medical Research Unit in [REDACTED]. This was routed for endorsement through the Petitioner's CO, the CO of Naval Medical Research Center (NMRC), up to the Chief, Bureau of Medicine and Surgery (BUMED). The Chief of BUMED investigated and concluded that the Petitioner's complaint of wrongs was with merit. The Petitioner's Article 138 complaint was forwarded to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)), who was the final reviewing authority. Per reference (c), the Petitioner's allegations were cognizable and had merit.

d. Enclosure (2) states, in part, that Petitioner's fitness report ending 15JAN31 is a valid report. Navy directives states that RS's are required to submit fitness report for a member's periodic report period. The Petitioner was able to provide input in the preparation of the report, which aids the RS. The observation is decided by the RS and does not require the member to be in daily contact. Petitioner did not show that the RS acted for an illegal or improper purpose and her request to have the reports ending 13JAN31 and 14JAN31 is without merit. The report ending 15JAN31 does not contain any adverse information. The RS assigned the Petitioner a promotion recommendation of "Must Promote," which is not adverse, and the trait marks assigned are not adverse and were at the discretion of the RS.

e. Enclosure (3) states, in part, that Petitioner's request has partial merit and warrants partial favorable action. The RS reports ending 13JAN31 and 14JAN31, prior to their revision, were reviewed by the FY16 Active Duty LCDR Staff Corps PSB. However, the revised reports were not rewritten and inserted into Petitioner's OMPF prior to the Board convening, and that a FY16 SSB be convened for Petitioner is with merit.

f. The Petitioner was appropriately considered by the FY17 Active Duty LCDR Staff Corps PSB in accordance with law and policy, the revised reports were reviewed, and she received her second FOS.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board carefully weighed all potentially mitigating factors, such as the assertion that the Petitioner would not receive a fair evaluation from within her chain of command, that the ISIC had an unlawful command influence on the grievance process, and that the redress contained in reference (e) failed to restore the Petitioner's career. The Board concluded that the fitness reports ending 13JAN31, 14JAN31 and 15JAN31 are all valid reports and will remain at part of her OMPF. The Board concluded that the two evaluations directed to be replaced in accordance with references (c) and (d), were placed into Petitioner's OMPF and were reviewed by the FY17 Active Duty LCDR Staff Corps PSB. The Board found the Petitioner was appropriately considered for promotion by the FY17 Active Duty LCDR Staff Corps PSB in accordance with law and policy, and her FOS by should remain as part of her OMPF. The reports were rewritten by the ISIC who was directed by higher authority. The Board could not find any error or injustice. The Board found no evidence within the regulations, and Petitioner provided none, that proper procedures were not followed by the ISIC or that he had any unlawful command influence on the grievance process. The Board concluded that redress was provided fairly; just not to Petitioner's expectation or satisfaction.

However, the Board did find the existence of an injustice warranting the removal of Petitioner's FY16 FOS by the Active Duty LCDR Staff Corps PSB.


With regard to Petitioner's request to be granted a SSB, the Board noted that the Petitioner must exhaust her administrative remedies prior to applying to this Board. Specifically, she must first submit a request for a SSB to through Navy Personnel Command (PERS 80).

In view of the above, the Board directs the following partial corrective action.

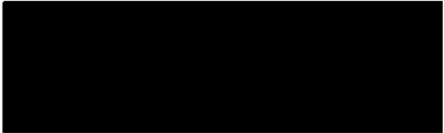
RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

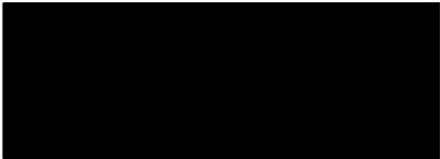
- a. That Petitioner's FOS by the FY16 Active Duty LCDR Staff Corps PSB be removed from her OMPF.
- b. That Petitioner submit a request for a SSB by the FY16 Active Duty LCDR Staff Corps PSB.
- c. That no further relief be granted.
- d. That Petitioner has a mandatory separation date of 1 March 2017.


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4. It is certified that 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.


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.


Executive Director