



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

██████████
Docket No: 11123-19
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████ USN, XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552

- Encl: (1) DD Form 149
(2) Fitness report for the reporting period 3 Jun 16 to 31 Jan 17
(3) CO, ██████████ ltr 1610 590-74-0933 of 8 Mar 17
(4) Fitness report for the reporting period 1 Feb 17 to 8 Mar 17
(5) Fitness report for the reporting period 9 Mar 17 to 3 May 17
(6) NPC ltr 1610 PERS-32 of 16 Dec 19

1. Pursuant to the reference, Petitioner, a commissioned officer of the Navy, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his record be corrected by modifying his fitness reports for the reporting periods 3 June 2016 to 31 January 2017, 1 February 2017 to 8 March 2017, and 9 March 2017 to 3 May 2017 to be not observed. Petitioner also request that block 42, "Promotion Recommendation" of each report to be modified to reflect not observed.

2. The Board, consisting of ██████████ ██████████ and ██████████ reviewed Petitioner's allegations of error and injustice on 12 May 2020 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, relevant portions of Petitioner's 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, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. Petitioner contends that his performance was not observed by his commanding officer (CO) or any officer in his chain of command during the contested reporting periods, he did not receive a copy of his fitness reports, and did not have an opportunity to sign his reports. Petitioner claims that during November 2016, he was ordered to pre-trial confinement until May 2017 when a General Court-Martial (GCM) was convened and he was found not guilty. Petitioner admits that he was partially observed from June 2016 to November 2016.

b. The advisory opinion (AO), enclosure (6) recommended that Petitioner's request be partially granted. The AO determined that Petitioner's fitness report for the reporting period 3 June 2016 to 31 January 2017 is valid and was extended until 8 March 2017. In this regard, Petitioner's commanding officer (CO)/reporting senior (RS) for the reporting period was relieved on 8 March 2017 due to lack of confidence in his ability to lead. Therefore, on the ending date of the report, the RS was the CO and properly submitted the report. The AO noted that the report is not adverse, contains no adverse comments, performance traits, or promotion recommendation.

c. The AO determined that enclosure (4), Petitioner's fitness report for the reporting period 1 February 2017 to 8 March 2017 is unnecessary. The AO noted that, enclosure (3), extending Petitioner's periodic fitness report ending date 31 January 2017 to 8 March 2017 is valid and covers a period of less than 90 days, therefore, enclosure (4) is unnecessary and should be removed.

d. The AO determined that enclosure (5), Petitioner's fitness report for the reporting period 9 March 2017 to 3 May 2017 is in error. In this regard, the AO noted that the report is a detachment of reporting senior report submitted for the immediate superior in command's (ISIC's) detachment. The AO also noted that in accordance with BUPERSINST 1610.10D, the Navy Performance Evaluation System Manual (EVALMAN) a report may be submitted without having continuously observed the MRO, but the basis for observation must be clearly explained in the report. The AO also noted that the basis for observation is not stated in the report, therefore, the report is in error. The AO provided that the RS may correct the report with a Letter-Supplement stating the basis for observation or submit a not observed report.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial corrective action. The Board substantially concurred with the AO that Petitioner's fitness report for the reporting period 3 June 2016 to 31 January 2017 and his 8 March 2017 extension letter are valid and shall remain in Petitioner's record as filed. The Board also concurred that Petitioner's fitness report for the reporting period 1 February 2017 to 8 March 2017 is unnecessary because this period is covered by the extension letter. Regarding Petitioner's fitness report for the reporting period 9 March 2017 to 3 May 2017, the Board determined that the fitness report is in error because the ISIC failed to provide justification for the basis of his observation as required by the EVALMAN. The Board thus concluded that Petitioner's fitness report for the reporting periods 1 February 2017 to 8 March 2017 and 9 March 2017 to 3 May 2017 shall be removed.

RECOMMENDATION

In view of the above, the Board directs the following corrective action:

Petitioner's naval record be corrected by removing his fitness report for the reporting period 1 February 2017 to 8 March 2017.

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Petitioner's naval record be corrected by removing his fitness report for the reporting period 9 March 2017 to 3 May 2017.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems/database entries which reference or discuss the material being expunged.

No other changes to 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.

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]	6/27/2020
Executive Director Signed by: [REDACTED]	