



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

BJG
Docket No: 1125-01
31 May 2001

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

Subj: IC1 (SW [REDACTED], US [REDACTED])
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 12 Feb 01 w/attachments
(2) Subject's ltr dtd 22 Feb 01 w/attachments
(3) Ltr of support in case of Subject dtd 7 Mar 01
(4) PERS-311 memo dtd 23 Apr 01
(5) PERS-85 memo dtd 16 May 01
(6) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that his naval record be corrected by removing the enlisted performance evaluation report for 1 December 1995 to 15 November 1996 (copy at Tab A to enclosure (1)). He also requested remedial consideration for advancement to pay grade E-7. He may submit to the Navy Personnel Command (NPC) (PERS-852) a request for a special selection board on the basis of the corrective action indicated below.

2. The Board, consisting of Messrs. Adams, Schultz, and Zsalman, reviewed Petitioner's allegations of error and injustice on 24 May 2001, 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. By letter at enclosure (2), Petitioner amended his request to ask for remedial consideration for advancement to pay grade E-7.

c. Enclosure (3) is a letter of support for Petitioner's case, signed by a Navy captain.

d. In correspondence attached as enclosure (4), PERS-311, the NPC office having cognizance over Navy performance evaluations, has commented to the effect that Petitioner's request to remove the report at issue has merit and warrants favorable action.

e. In correspondence attached as enclosure (5), PERS-85, the NPC office responsible for Navy officer promotions and enlisted advancements, has commented to the effect that the removal of Petitioner's contested report would qualify him to submit a request for a special selection board for advancement to pay grade E-7.

CONCLUSION:

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
14 Nov 96	LCDR [REDACTED] USN	1 Dec 95	15 Nov 96

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 such 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 appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

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.

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.

Robert D. Zsalmán
For W. DEAN PFEIFFER
Executive Director



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

1610
PERS-311
23 April 2001

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

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

Subj: IC1 (SW [REDACTED], US [REDACTED])

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) General Court-Martial Order 3-97 dated 10 September 1997
(c) [REDACTED] Sworn Affidavit dated 19 May 2000

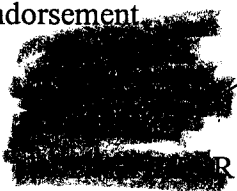
Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 1 December 1995 to 15 November 1996.
2. Based on our review of the material provided, we find the following:
 - a. A review of the member headquarters record revealed the report in question to be on file. The member signed the report acknowledging the contents and his right to submit a statement. The member indicated he did desire to submit a statement. The member's statement and reporting senior's endorsement is properly reflected in the member's digitized record.
 - b. The report in question is a Periodic/Regular report. The member alleges the adverse performance evaluation was submitted in error due to unsubstantiated spousal abuse.
 - c. 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. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, he must provide evidence to support the claim. I believe Petty Officer [REDACTED] has done so.
 - d. Based on the information provided in references (b) and (c), it appears that the report was based on the personal circumstances of the member rather than the actual performance of his duties during the reporting period. An investigation regarding the member's deficiencies was conducted and the determination was made that Petty Officer [REDACTED] is not guilty of any of the charges against him.

e. Enhancement of chances for promotion alone, is not sufficient reason to remove a performance evaluation.

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

3. While we are always reluctant to recommend removal of a performance evaluation, we believe that justice may be better served by the removal of the performance evaluation, member's statement, and reporting senior's endorsement



Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
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1430
Ser 85/387
16 May 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)

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

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED] U [REDACTED]

Ref: (a) BUPERSINST 1401.2

Encl: (1) BCNR file #01125-01

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending approval.

2. PERS-311 memorandum of 23 April 2001 has recommended removal of an evaluation for the period of 1 December 1995 to 15 November 1996. Provided this evaluation is removed from Petty Officer [REDACTED] record, he should then follow the requirements of reference (a) and submit for consideration by a Special Enlisted Selection Board.

[REDACTED]

By direction