



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

HD:hd  
Docket No: 04665-02  
13 January 2003

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

Subj: LTJG [REDACTED], JR., USN [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 15 May 02 w/attachments  
(2) PERS-834 memo dtd 17 Jun 02  
(3) PERS-311 memo dtd 2 Dec 02  
(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 the fitness report for 10 November 2000 to 31 May 2001, with letter of extension dated 22 June 2001, and all references to the nonjudicial punishment (NJP) of 23 February 2001, including a letter of reprimand. A copy of the contested fitness report is at Tab A. Petitioner's requests to remove the fitness report extension letter and the letter of reprimand were not considered, as they are not in his naval record. The fitness report at issue is the only document in the record referencing the NJP.

2. The Board, consisting of Messrs. Cooper, Frankfurt and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 9 January 2003, 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 fitness report marks and remarks were based solely on the NJP, which has been set aside.

c. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) office having cognizance over officer performance and separations recommends amending the

fitness report to remove express references to NJP, rather than completely removing the report, stating "Though the NJP was set aside, there is no indication that the marks on [Petitioner's] performance traits or the promotion recommendation were made solely based upon his NJP."

d. In correspondence attached as enclosure (3), the NPC office having cognizance over fitness report matters has recommended removing the entire contested fitness report, stating "In view of the member's NJP being set aside, the member's performance trait marks and promotion recommendation are now considered inappropriate."

**CONCLUSION:**

Upon review and consideration of all the evidence of record, notwithstanding the contents of enclosure (2), and especially in light of the contents of enclosure (3), 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 fitness report and related material:

Date of Report	Reporting Senior	Period of Report From To
01May31	CAPT ██████████ USN	00Nov10 01May31

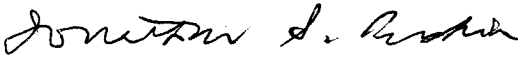
b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal 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 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.

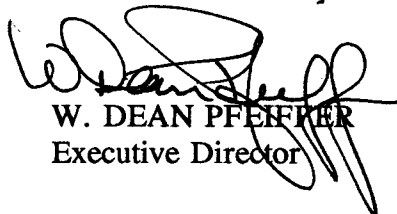
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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  
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



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
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MILLINGTON TN 38055-0000

1920  
Ser 834/553  
17 Jun 02

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

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: BCNR ICO ENC [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB of 14 JUN 02

Encl: (1) BCNR Case File w/Service Record

1. Reference (a) requested comments and recommendations regarding ENC [REDACTED] request for removal of references from his permanent record pertaining to an NJP that was set aside. Enclosure (1) is returned as a matter under your purview.

2. The respondent's request is valid. The following remarks should be removed from his fitness report and counseling record for the period 00NOV10 to 01MAY31: "resulting in Commanding Officer's Non-Judicial Punishment. Found in violation of UCMJ Articles 128 (Assault), 133 (Conduct Unbecoming an Officer by being drunk and disorderly), and 134 (Disorderly Conduct). Awarded Punitive Letter of Reprimand on 23 Feb 01. Concluding date: 28 Feb 01."

3. Though the NJP was set aside, there is no indication that the marks on his performance traits or the promotion recommendation were made solely based upon his NJP, and thus there is no valid basis for removing the marks on the performance traits or the promotion recommendation from this fitness report.

5. PERS-834 Point of Contact is LCP [REDACTED]

Head, Officer Performance and  
Separations Branch



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

1610  
PERS-311  
2 December 2002

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

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

Subj: ENS [REDACTED] JR., US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual  
(b) CO, U. S. Navy Support Facility [REDACTED] 74  
of 10 December 2001  
(c) CNP ltr 1611 Ser 834C/064 of 18 January 2002

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 10 November 2000 to 31 May 2001 and fitness report extension letter of 22 June 2001.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member did not desire to submit a statement. The fitness report extension letter is not in the member's record; however, the member provided a copy with his petition. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement.

b. Reference (b) set aside the member's NJP on 10 December 2001 and reference (c) indicated action had been taken to ensure no documentation regarding the member receiving NJP was filed in the member's record. In view of the member's NJP being set aside, the member's performance trait marks and promotion recommendation are now considered inappropriate.

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

3. We recommend the fitness report be removed as we cannot determine what performance trait marks and promotion recommendation the member now deserves.



Performance  
Evaluation Branch