



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

BJG
Docket No: 8361-01
22 May 2002

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

Subj: [REDACTED] US [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 18 Sep 01 w/attachments
(2) PERS-311 memo dtd 22 Feb 02
(3) PERS-811 memo dtd 5 Mar 02
(4) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing both the "not observed" and observed enlisted performance evaluation reports for 1 December 1994 to 30 January 1995, the performance evaluation report for 31 January 1995 to 5 March 1996, and the service record page 9 (Enlisted Performance Record) whose last entry is the "late entry" for 1 December 1994 to 30 January 1995. Copies of the contested documents are in enclosure (1) at attachments (1) through (4). He further requested remedial consideration for advancement to MMC (pay grade E-7).

2. The Board, consisting of Messrs. Agresti, McBride, and Schultz, reviewed Petitioner's allegations of error and injustice on 14 March 2002, and pursuant to its regulations, determined that the limited 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. The contested page 9 includes several entries not pertaining to matters of concern in this case. It also includes an entry dated 31 January 1995 concerning Petitioner's nonjudicial punishment (NJP). Although the entry is obscured by lining out and the word "VOID," it is entirely legible. The page 9 additionally includes a "late entry" concerning the contested "not observed" report for 1 December 1994 to 30 January 1995.

c. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) Performance Evaluation Branch (PERS-311) has commented to the effect that Petitioner's request to remove performance evaluation reports has merit and warrants favorable action.

d. In correspondence attached as enclosure (3), PERS-811, the NPC office having cognizance over active enlisted advancements, has commented to the effect that Petitioner's request warrants approval. PERS-811 states that he may submit a request to NPC for special selection board consideration.

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 finds the existence of an injustice warranting partial relief, specifically, removal of the contested enlisted performance evaluation reports and modification of the page 9 at issue.

In light of the advisory opinions, the Board finds that the contested performance evaluation reports should be removed. They find the contested page 9 should not be completely removed, as Petitioner requested, but modified by removing the entry concerning the contested "not observed" report for 1 December 1994 to 30 January 1995; and completely obliterating the entry regarding the NJP, so that it cannot be read. They note that Petitioner may submit a special selection board request to NPC, citing this corrective action.

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

RECOMMENDATION:

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

Date of Report	Reporting Senior	Period From	of Report To
Undated ("Not observed")	CAPT [REDACTED] USN	1 Dec 94	30 Jan 95
Undated (Observed)	CAPT [REDACTED] USN	1 Dec 94	30 Jan 95
18 Mar 96	CAPT S [REDACTED] USN	31 Jan 95	5 Mar 96

b. That there be inserted in Petitioner's naval record ONE memorandum in place of the removed reports, containing appropriate identifying data concerning the reports; that such

memorandum state that the portion of his performance record for 1 December 1994 to 5 March 1996 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 removed material.

c. That Petitioner's Enlisted Performance Record (Page 9) whose last entry is the "late entry" for 1 December 1994 to 30 January 1995 be modified as follows:

(1) Completely obliterate, so it cannot be read, the lined out "VOID" NJP entry dated 31 January 1995.

(2) Remove the "late entry" concerning the "not observed" performance evaluation report for 1 December 1994 to 30 January 1995.

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

e. 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.

f. 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.

g. That the remainder of Petitioner's request be denied.

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.


W. DEAN PFEIFFER
Executive Director

5361-01



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

1610
PERS-311
22 February 2002

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

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

Subj: [REDACTED]

Ref: (a) BUPERSINST 1616.9A
(b) CAPT Steven G. Slaton, USN (RET) ltr of 7 August 2001
(c) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 1 December 1994 to 30 January 1995, 31 January 1995 to 5 March 1996, and enlisted performance record dated 30 January 1995.

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

a. A review of the member's headquarters record revealed the reports in question to be on file. The report for the period 1 December 1994 to 30 January 1995 is reflected in the member's digitized record twice. One is a graded report and the other a NOB report. The member signed the reports acknowledging each and his right to submit a statement. The member indicated he did desire to submit a statement for the graded report ending 30 January 1995 and he did not desire to submit a statement for the NOB report. PERS-311 has no record of ever receiving the member's statement and the reporting senior's endorsement. The member did not desire to submit a statement for the report ending 5 March 1996.

b. The reports for the period 1 December 1994 to 30 January 1995 was prepared in accordance with reference (a), Chapter 2, upon the member receiving Non-Judicial Punishment (NJP).

c. The member provides documentation of his NJP of 30 January 1995 being set-aside on 5 March 1996. In accordance with reference (a), Chapter 1, paragraph 1-11.e and reference (b), the comments contained in the report are now considered inappropriate.

d. The report for the period 31 January 1995 5 March 1996 was prepared to reinstate the member to Petty Officer First Class.

e. Per reference (c), Annex S, paragraph S-12, the report for the period 31 January 1995 to 5 March 1996 the comments, performance trait marks, and promotion recommendation are now considered inappropriate.

e. The member proves the reports to be unjust or in error.

3. In view of the above we recommend the performance evaluation in question be removed from the member's record.



Performance
Evaluation Branch

0301-01



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1430

Ser 811

5 Mar 02

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
MM [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1430.16E

Encl: (1) BCNR file #08361-01

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending approval.
2. Petty Officer [REDACTED] awarded Non-Judicial punishment, which was subsequently set aside. The documentation of NJP was never removed from his service record, which would have a direct effect on his potential for advancement.
3. Petty Officer [REDACTED] may compete against the fiscal year 03 Chief Petty Officer Selection Board, and if selected for advancement, he may petition for a backdating of advancement. He may also request consideration for a Special Selection Board in accordance with BUPERSINST 1401.2.

[REDACTED]
V [REDACTED]
By direction