



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

Docket No: 5725-08  
18 September 2008

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 19 Mar 08 w/attachments  
(2) HQMC MMR/PERB memo dtd 10 Jun 08  
(3) HQMC MPE memo dtd 11 Jul 08  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that her naval record be corrected by removing the fitness report for 28 October 2006 to 2 May 2007, a copy of which is at Tab A.

2. The Board, consisting of Ms. Humberd and Messrs. Boyd and W. Hicks, reviewed Petitioner's allegations of error and injustice on 18 September 2008, 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends the contested fitness report, in which she received the lowest marks of her 17-year career, was the result of bias against her on the part of the reporting

senior (RS) "and may have even been gender related." She asserts the RS never explained to her why he had marked her so low, when his comments would appear to support higher marks.

d. The report at issue reflects the RS assigned Petitioner two marks of "B" (second lowest of seven possible), 10 of "C" (third lowest) and two of "D" (fourth lowest). His narrative comments were highly complimentary. The reviewing officer indicated concurrence with these marks.

e. Petitioner provided supporting statements from a chief warrant officer, a lieutenant colonel and a gunnery sergeant (enclosures (2) through (4) of her application at enclosure (1)). They commented to the effect Petitioner deserved a more favorable performance appraisal; that the RS was loud and verbally abusive, particularly to Petitioner; and that he undermined her authority.

f. Enclosure (2), the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case, concluded that Petitioner's request should be denied. The PERB concluded that "one display of temper over the entire reporting period does not constitute personal bias." They stated the RS had no obligation to explain the marks, which were not adverse, and concluded his comments did support the marks he assigned.

g. In enclosure (3), the HQMC equal opportunity office stated "The command climate described in [Petitioner's] petition (encl 2-4) was determined to be hostile in nature as the result of poor leadership on the part of [the RS]." That office concluded "There is not enough evidence contained within [Petitioner's] petition to rule out the possibility that gender bias did/did not exist within [the RS's] command."

#### CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosure (2), and especially in light of the finding, at enclosure (3), of hostile command climate and poor leadership by the RS, the Board finds an injustice warranting removal of the contested fitness report. The supporting statements give the Board reason to question the RS's impartiality. Further, contrary to the PERB, the Board agrees with Petitioner that the low marks and commendatory comments are inconsistent. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following fitness report and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
27 Apr 07	[REDACTED]	28 Oct 06	2 May 07

b. That there be inserted in her 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 the magnetic tape maintained by HQMC be corrected accordingly.

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 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. 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.

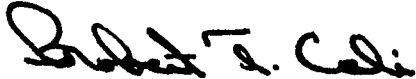
ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:

  
9-25-08

**Robert T. Cali**  
Assistant General Counsel  
(Manpower and Reserve Affairs)