



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

SMS  
Docket No: 6711-08  
31 December 2008

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

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

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

Encl: (1) Case Summary with advisory opinion  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the United States Marine Corps Reserve, applied to this Board requesting to be reinstated on active duty, remove the nonjudicial punishment (NJP) dated 10 May 2006, remove the fitness reports for 24 May to 31 October 2005, 1 November 2005 to 3 February 2006 and 1 to 10 May 2006, and correct the record to show that she was not discharged on 1 November 2006, but continued to serve on active duty. Copies of the NJP and fitness reports are at Tab A.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 December 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, advisory opinions, 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's application was filed in a timely manner.

c. On 18 May 2003, Petitioner was appointed a second lieutenant in the Marine Corps Reserve after more than eight years of prior honorable active enlisted service in the Marine Corps.

d. On 23 January 2004, Petitioner reported to the Marine Wing Headquarters Squadron 2 (MWHS-2) and was assigned duties as an adjutant. On 11 April 2004, she received a fitness report that

stated in essence that she had performed duties as an adjutant before attending the Adjutant's Course, had unlimited potential, and was enthusiastically recommended for retention and promotion. On 3 June 2004, Petitioner completed the Adjutant's Course with a grade point average of 96.68%. On 4 June 2004, she reported back to MWHS-2, at which time she resumed her duties as adjutant under the command of Lieutenant Colonel (LtCol) S---. She subsequently received exemplary fitness reports and was credited with having turned a wandering administrative section into a well-oiled machine.

e. During February 2005, Petitioner and Chief Warrant Officer 4 (CWO4) B---, both members of the same command, deployed to Iraq and subsequently socialized together as well as with other peers.

f. On 10 May 2005, Petitioner was awarded the "2005 Marine Corps Aviation Association Earle Hattaway Award for Marine Aviation Ground Officer of the Year" and on 23 May 2005, she was appointed a first lieutenant in the Marine Corps Reserve at which time she received another exemplary fitness report.

g. During May 2005, Petitioner departed Iraq. Based on CWO4 B---'s statement provided to BCNR, it was at this time that he confided to his wife that he had developed feelings for Petitioner, and his wife assumed that Petitioner had feelings for him. He stated that his wife then began calling Petitioner several times a day threatening to go to the commanding general (CG) and that Petitioner assured his wife that she was "just friends" with her husband and that she was terribly sorry that CWO4 B--- misconstrued their friendship as being more than that. LtCol S---'s subsequent testimony at CWO4 B---'s Board of Inquiry (BOI) stated in essence that after it was brought to his attention that there may be an inappropriate relationship between Petitioner and CWO4 B---, he initiated an investigation. During June 2005, Petitioner attempted to terminate the increasing volatile situation at her unit by requesting reassignment, and in response, her occupational field sponsor tried to assign her to another unit, but the reassignment was terminated when LtCol S--- intervened with the chief of staff.

h. On 3 July 2005, LtCol S--- ordered Petitioner to have no further contact with CWO4 B---. On 7 July 2005, LtCol S--- issued a military protective order (MPO) to CWO4 B--- ordering him to have no further contact with Petitioner.

i. During October 2005, CWO4 B--- departed Iraq. As previously stated, Petitioner had already departed Iraq during May 2005.

j. On 7 October 2005, Mrs. B---'s civil charges of communicating a threat to Petitioner were dismissed.

k. Petitioner was unaware that Brigadier General (BGen) M---, Commanding General, Second Marine Aircraft Wing (2d MAW) and Mrs. B---, communicated by electronic mail (e-mail) during the period 23 to 25 October 2005, regarding her husband, CWO4 B--- about

Petitioner, and her personal mental conditions, and in doing so copied LtCol S--- on the e-mails. On 25 October 2005, Mrs. B--- sent her last e-mail of record to BGen M--- in which she stated that she had not been completely honest with him, that her husband told her that he owed everything to the Marine Corps, and asked for his help and guidance. BGen M---'s reply on 25 October 2005, stated as follows:

...First off, you're not "emailing a general," you're emailing a friend. Do not worry about George [CWO4 B---, her husband] and a court martial [sic]. He'll only go to a court martial [sic] if the investigation finds wrongful conduct, and then it's not a matter of record unless found guilty. The investigation process is very fair and impartial [sic], and then it only makes a recommendation. So what I am saying is that I have all the confidence that if there's nothing to any of this, then it will go away. There's a distinct difference between a crime and a mistake; [CWO4 B---] likely made a mistake, not a crime [sic]. I know [CWO4 B---] is a good man - one can't go to war with someone (twice) and not learn something about them. I'd move toward the sound of canons [sic] with him anytime. My hope and prayer is that all this will bond the two of you together all the more. So, what should you do? You should relax and let this take its course. You should also stop laying all the blame on yourself - there's plenty to go around.  
s/f Boomer...

l. On 31 October 2005, Petitioner received a semi-annual fitness report in which LtCol S--- stated that she was a solid performer, had a positive attitude, and the administrative processes had improved due to her efforts, specifically, she forced the unit to utilize Marine on-line capabilities, but ranked her as the lowest performer.

m. On 30 November 2005, LtCol S--- reissued a no contact order for Petitioner and CWO4 B--- after the investigation that he had initiated in Iraq was completed which found no evidence to support allegations of adultery or fraternization. A non-punitive letter of caution was issued to her as well.

n. On 12 December 2005, CWO4 B--- went to Petitioner's civilian family home at night and was told by her that he was violating the MPO and to leave. He persisted in trying to talk and after she realized that he appeared to be intoxicated, she allowed him inside to sleep in an extra room.

o. On 3 January 2006, Mrs. B--- called LtCol S--- and informed him that she had evidence to show that CWO4 B--- had contact with Petitioner on 12 December 2005. Specifically, a global positioning

system device placed on CWO4 B---'s vehicle by a private investigator hired by Mrs. B--- showed that his car had been at Petitioner's civilian residence on 12 December 2005.

p. On 3 February 2006, LtCol S--- relieved Petitioner of her duties as adjutant due to her failure to satisfy billet requirements and assessed her as being "unsatisfactory." She was then assigned duties as a special projects officer. Per CWO4 B---'s subsequent testimony and his occupational field sponsor's testimony at his BOI, CWO4 B--- was not relieved of his duties, but continued to serve in his billet.

q. On 7 May 2006, a Memorandum of Pretrial Agreement (MPA) was signed by Petitioner in which she agreed to accept NJP and resign her commission if the general court-martial (GCM) convening authority dismissed her failure to obey a MPO charge.

r. On 10 May 2006, BGen M--- administered NJP to Petitioner for failure to obey a lawful order and as punishment, issued her a punitive letter of censure. She also received an adverse fitness report based on the NJP.

s. On 10 May 2006, BGen M--- administered NJP to CWO4 B--- for failure to obey a lawful order and as punishment, issued him a punitive letter of censure. About ten days later, CWO4 B--- submitted his request for retirement to LtCol S---, per his subsequent testimony at his BOI.

t. On 25 May 2006, Petitioner submitted her resignation in lieu of processing for administrative separation for cause based on the NJP of 10 May 2006, and further requested an honorable characterization of service. On 9 June 2006, BGen M--- forwarded Petitioner's request and recommended an honorable characterization of service.

u. On 6 July 2006, the CG of II Marine Expeditionary Force (MEF) notified Petitioner that he was recommending her for administrative separation by reason of misconduct, and a general characterization of service. On 13 July 2006, Petitioner acknowledged the separation recommendation and requested to tender a resignation in lieu of administrative separation as she had agreed with the MPA. On 21 July 2006, LtCol S--- recommended that Petitioner be discharged under honorable conditions (Note: under honorable conditions is a general characterization of service). On 24 July 2006, Petitioner further responded to the notification of recommendation for administrative separation by requesting an unqualified resignation with an honorable characterization of service. She also objected to the notification procedure and requested a BOI. On 7 August 2006, the new CG of 2d MAF forwarded Petitioner's unqualified resignation request dated 24 July 2006, and recommended an honorable characterization of service. On 24 August 2006, the new CG of II MEF, modified the subject line to a recommendation for administrative separation, an involuntary separation due to misconduct, and an honorable characterization of service.

v. On 2 October 2006, CWO4 B---'s BOI convened and found misconduct, but also decided that his misconduct did not warrant separation. A portion of the BOI report states in essence as follows:

(1) CWO4 B---'s counsel stated to the BOI that BGen M--- recommended that no show cause occur for him, but that the officers at the three star level required a BOI for everyone. However, he said that should not be interpreted by the BOI that they are expected to recommend discharge. CWO4 B---'s counsel also read a letter to the BOI that was provided by BGen M---, which stated in essence that however much CWO4 B---'s actions and poor judgment disappointed him, he did not believe that they warranted his separation from the Corps via the BOI, and that his request to retire would already cut his career short. BGen M--- said that in his opinion the NJP is a fair and just resolution of the matter. His counsel further stated that CWO4 B--- hoped to retire next summer, he made a mistake, and that this was neither an adultery case nor a fraternization case, but the disobeying of a lawful order. His counsel also provided e-mail's that the government did not disclose to the BOI member's, which included an e-mail from Mrs. B--- to BGen M--- explaining some of her new concerns about what she stated and an admission that she lied about some details.

(2) When LtCol S--- was questioned by CWO4 B---'s counsel regarding the appropriate outcome concerning CWO4 B---'s disobedience of a lawful order, he stated that the NJP was an appropriate disposition and he recommended that he be allowed to retire. When LtCol S--- was questioned by CWO4 B---'s counsel regarding Petitioner, he agreed that he made a positive recommendation for her by recommending that she be honorably discharged, and further stated that she was being released under the auspices of a probationary officer and that she just needs to move on with her life.

(3) When CWO4 B---'s occupational field sponsor was questioned by his counsel, regarding the affect of the charges and his performance, he stated in essence that his performance had not been affected and he had continued to perform his duties.

w. On 5 October 2006, the Deputy Commandant of the Marine Corps Manpower and Reserve Affairs (DC M&RA) denied Petitioner's resignation request and recommended an involuntary honorable discharge as determined by the service Secretary. On 13 October 2006, the Secretary of the Navy approved this recommendation, and directed an involuntary honorable discharge by reason of Secretarial authority.

x. On 20 October 2006, CWO4 B---'s BOI finding of misconduct and recommendation that he not be separated was forwarded via the chain of command.

y. On 1 November 2006, Petitioner was honorably discharged by reason of Secretarial authority and received no separation pay.

z. On 8 November 2006, the CG, 2d MEF concurred with CWO4 B---'s BOI recommendation and on 11 December 2006, the DC M&RA closed his case.

aa. In her application, Petitioner's counsel states that after CWO4 B---'s wife contacted Petitioner's commanding officer accusing her of having an affair with her husband, an investigation then ensued which found no evidence to support the allegation. He further states that after LtCol S--- issued a MPO to CWO4 B---, he nonetheless drove to Petitioner's civilian residence unannounced and was told to leave, but after she realized that he appeared to be intoxicated, she and her husband allowed CWO4 B--- to sleep in a guest room, and that Mrs. B--- then informed the command of this contact which resulted in the disparate outcome of the two cases. As such, Petitioner's counsel further states that two officers were similarly situated cannot be treated differently since Petitioner was not entitled to have her case heard by a BOI. When CWO4 B---'s BOI heard the evidence and circumstances of the single offense of violation of a lawful order, it concluded that the circumstances did not warrant his separation from the Marine Corps and most importantly, the government argued to his BOI that he was the "instigator" and further argued that his conduct was even more serious than Petitioner's. As such, Petitioner requests that her discharge be set aside and that she be reappointed in the Marine Corps.

bb. Attached to enclosure (1) is an advisory opinion from the Headquarters Marine Corps (HQMC) Military Law Branch, Judge Advocate Division (JAM7) dated 16 April 2007, which states, in part, as follows:

...[BCNR] requested an advisory opinion on [Petitioner's]...request's [sic] to replace her separation code along with the narrative reasoning behind her separation. In the alternative, [Petitioner] request's [sic] to be reinstated as a First Lieutenant [sic], with back pay from the date of her discharge.

...[Petitioner's] request for relief should be denied as her administrative separation was conducted in accordance with applicable regulations. Further, [Petitioner] does not provide sufficient evidence of probable material error or injustice warranting relief.

...we note that no legal error occurred in the imposition of NJP or in the subsequent administrative separation in [Petitioner's] case.

...Federal statutes [sic] allow for the separation of commissioned officers without

the recommendation of a BOI when they have less than five years of active duty service... [Petitioner] was properly separated pursuant to this statutory authority.

...At the time of his BOI, CWO-4 [B---] was not yet retirement eligible, nor was he subject to separation via the notification procedure...CWO-4 [B---]... appeared before a Board empowered to end a [sic] his nearly twenty year career with not only an adverse characterization of service and separation code, but also without any retirement benefits. He successfully convinced the properly convened BOI that he should remain on active duty. Statutorily, closing an officer misconduct case is the only option available to a commander after a BOI recommends retention...

...Ultimately [Petitioner] received the full benefit of her negotiated pretrial agreement. She was insulated from federal prosecution at a General Court-Martial and was administratively separated, pursuant to misconduct, with an honorable characterization of service.

...The differences in conclusion [sic] of these two cases are clearly a product of statutory construction rather than any inequitable perceptions or actions on the part of the command...

cc. Attached to enclosure (1) is an advisory opinion from the HQMC JAM7 dated 24 May 2007, which states, in part, as follows:

...[BCNR] requested an advisory opinion on [Petitioner's] request's [sic] for separation pay...

...In order to qualify for full severance pay, an officer must have been involuntarily discharged with an honorable characterization of service and have served for more than six years on active duty but less than 20 years prior to separation. [Petitioner] was involuntarily discharged from the Marine Corps with an honorable characterization of service and has been on continuous active duty since October 1994 until her separation. Notwithstanding the minimum requirements for severance pay...[regulations] disqualifies [sic] officers who have been separated for acts of misconduct...

...In this case, [Petitioner] was separated due to misconduct. Accordingly, we recommend that [Petitioner's] request for separation [sic] be denied.

dd. Attached to enclosure (1) is a response from Petitioner's counsel dated 8 August 2007, which states, in part, as follows:

...evidence regarding the bias and prejudice of [Brigadier] General [M---], the officer who imposed NJP on [Petitioner], was never disclosed...before she was offered the opportunity to accept NJP. [E-mail's during October 2005 between BGen M--- and Mrs. B--- were] not disclosed by the Government during the course of the investigation or before [Petitioner's] NJP, [BGen M---] and [Petitioner's] accuser engage[d] in a series of e-mail communications...

...This email does not reflect that [Brigadier] General [M---] was acting as a neutral and detached fact-finder...

...[Brigadier] General [M---]'s failure to disclose his friendship with Mrs. [B---] was also symptomatic of his apparent intent to discriminate against [Petitioner] on the basis of gender. It is a matter of record that the violation of a lawful order was entirely the product of CWO-4 [B---]'s decision to violate the order. Notwithstanding that CW)-4[sic][B---] was the more experienced officer and was clearly the more culpable of the two accused of the same offense, CWO-4 [B---] was not separated from the Marine Corps, unlike [Petitioner]. In this case identical offenses...received grossly disproportionate outcomes...

(1) Included with the rebuttal is a statement to BCNR provided by retired CWO4 B---, which states in essence that his wife became jealous when she found out that he and Petitioner developed a friendship while serving in Iraq and he intensified her jealousy when he admitted to her that he had personal feelings for Petitioner. His wife assumed that Petitioner developed the same feelings for him, which subsequently resulted in his wife speaking with BGen M--- and that the investigating officer assured her that CWO4 B--- would receive nothing more than a fine, but that Petitioner was done in the Marine Corps.

ee. Attached to enclosure (1) is a further response from Petitioner's counsel dated 11 September 2007, which provided



Petitioner's phone records that show no contact occurred between her and CWO4 B--- and further states in essence that the commanding officer and commanding general were friends with and communicated their friendship to CWO4 B---'s wife, assisting her to the detriment of Petitioner. He further states that the commanding general who issued the punishment to Petitioner never disclosed his apparent close personal relationship and friendship with Mrs. B---, as is reflected in the e-mail exchange between the commanding general and Mrs. B---, and the e-mails were provided to Petitioner after she had been issued punishment. He further states that investigations conducted by the command found no misconduct and the investigator hired by Mrs. B--- found no activity or inappropriate relationship between Petitioner and CWO4 B---, and the only evidence the investigator did find was the one time violation of the order when CWO4 B--- drove unannounced to Petitioner's residence. Petitioner's counsel further states that her gender did apparently play a role in how she was treated throughout the investigation process and during the time prior to her separation. Specifically, she was relieved of her duties, placed at a desk in which her primary job consisted of cleaning and taking out the trash, received adverse fitness reports, and was discharged. On the other hand, CWO4 B--- was never relieved of his duties, but continued to serve in his position until he retired and he did not receive an adverse fitness report. Accordingly, Petitioner's counsel requests that the Board grant relief.

ff. Attached to enclosure (1) is an advisory opinion from the HQMC JAM3 dated 12 March 2008, which states, in part, as follows:

...[BCNR] requested an advisory opinion [regarding the removal of the NJP and adverse fitness reports] to rebut a previous advisory opinion provided by this office...

...As stated in previous advisory opinions, we recommend the board [sic] deny [Petitioner's] request...

...[Petitioner's] claim of gender bias and discrimination do not ring true in light of the processing that occurred in the respective cases. [Petitioner] and the warrant officer received [NJP]. As a probationary officer, [Petitioner] was notified that she was being processed for separation via notification procedures. She responded with written materials, and was separated with an honorable characterization of service...

...The warrant officer involved in the process was ordered to show cause for retention at a [BOI], which he did. The [BOI], after a full hearing of the facts

and circumstances of the situation between [Petitioner] and the warrant officer, recommended that the warrant officer not be separated from the Marine Corps. This finding, binding on the Secretary of the Navy, permitted the warrant officer of nineteen years and three months of service to reach retirement...

...[Petitioner's] administrative separation from the Marine Corps due to misconduct is legally sufficient. [Petitioner] has not shown sufficient basis for equitable relief. We recommend that [Petitioner's] request be denied...

gg. Attached to enclosure (1) is an advisory opinion from the HQMC JAM3 dated 25 April 2008, in further response to BCNR's previous request, which states, in part, as follows:

...the [Performance Evaluation Review Board (PERB) is]...the initial action agency for fitness report appeals. JAM defers to the opinion of PERB concerning fitness report analysis...

...Review of the evidence provide [sic] does not indicate any legal error in the administration of [Petitioner's] NJP.

...We recommend that [Petitioner's] request be denied...

hh. In response to a request by BCNR for an advisory opinion regarding removal of Petitioner's adverse fitness reports, the HQMC PERB provided an advisory opinion dated 25 August 2008, attached to enclosure (1), which states, in part, as follows:

...it was the opinion of the PERB that the contested fitness report should remain in [Petitioner's] Official Military Personnel File...

ii. Attached to enclosure (1) is a response from Petitioner dated 13 October 2008, which states in essence that during her tour with MWSS-2, she held many primary and secondary billets simultaneously that she excelled in, was awarded on several occasions, and was never counseled for poor performance until she received an adverse fitness report when LtCol S--- relieved her of her duties. She further states that the first relief for cause fitness report that she signed, was subsequently revised by her reporting senior and LtCol S---, and explains the true reason that LtCol. S--- relieved her. Specifically, the first version of the relief for cause fitness report stated that she was counseled on a relationship with a married

officer, she was married, and she was told how to improve herself, and it further accused her of larceny. Regarding the NJP, she states that it was not until she was faced with a felony conviction, debt, and emotional stress with a pending court-martial, and her counsel's statement to her that she would be administratively separated no matter what decision she made, she felt she had no avenue to address the injustices until her petition to the BCNR.

jj. According to the Judge Advocate General Manual for Courts-Martial, NJP accused notification and election of rights provides that the accused has the right to be informed of the information against him or her relating to the offenses alleged. Regulations also state that the accused has the right to have made available to them for inspection, all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing. Regulations also state that a commander who is the accuser is disqualified to act as a convening authority and must forward charges to a superior convening authority, and further states that a commander is considered an accuser when he has an interest, other than an official interest, in the prosecution of the accused. In addition, according to regulations, the Commandant of the Marine Corps expects all matters involving officer discipline to be handled promptly and by the same token, it must be absolutely clear that commanders are expected to dispose of cases consistently, equitably, and in the interest of good order and discipline within the boundaries established by the Manual for Courts-Martial and regulations. Furthermore, the law and regulations allow commanders to recommend separation of commissioned officers without the recommendation of a BOI when they have less than five years of active duty service. The law and regulations also allow commanders to recommend retention in such cases.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board finds that Petitioner's contention of injustice and disparate treatment credible. In this regard, two officers in the same command who were both subjects of investigations that resulted in no disciplinary action were issued orders to have no contact with each other, which CWO4 B--- flagrantly violated and Petitioner disobeyed when she allowed him inside her home. Both officers subsequently had NJP by a convening authority, BGen M---, who had an interest other than in an official capacity of CWO4 B---, and who also withheld this information from Petitioner, and as such, violated her rights as the accused at NJP. The Board also finds that although regulations provide different avenues of redress for officer misconduct and separation, BGen M---, who had a personal interest in the outcome of both cases, initiated and influenced both administrative processes that resulted in two distinct outcomes which were effectively demonstrated by his contradictory recommendations. The Board also notes that the disparate outcome of each case failed to adhere to the Commandant of the Marine Corps' expectations

regarding disposition of cases in a consistent and equitable manner. The Board further finds that Petitioner's disparate treatment also began well before she had NJP as evidenced by her relief for cause due to her failure to satisfy billet requirements even though her performance record clearly shows that she was highly praised by LtCol S--- for her professional competency before he began receiving e-mails from Mrs. B---. The Board also finds that LtCol S---'s disparate treatment of Petitioner was demonstrated by his testimony at CWO4 B---'s BOI. The Board also finds that CWO4 B---'s BOI that recommended his retention, was provided copies of e-mail's between BGen M--- and Mrs. B--- regarding the alleged misconduct, which were withheld by the government as his counsel so stated. In addition, the Board considers Petitioner's overall service record that included more than 12 years of exemplary service in which she established her professional credibility as evidenced by her appointment as a commissioned officer, completing the requirements of the Adjutant's Course with a 96.68% proficiency, overall exemplary fitness reports, and receiving the "2005 Marine Corps Aviation Association Earle Hattaway Award for Marine Aviation Ground Officer of the Year". Therefore, the Board concludes that the NJP, administrative separation documents, and fitness reports ending 31 October 2005, 3 February 2006, and 10 May 2006, should be removed, and that she be reinstated as a commissioned officer on active duty in the Marine Corps Reserve with all back pay and allowances with no time lost shown.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP dated 10 May 2006, and the punishment imposed.

b. That Petitioner's naval record be further corrected to show that she was not discharged on 1 November 2006, but continued to serve as a commissioned officer on active duty, and as such be paid all back pay and allowances with no time lost.

c. That Petitioner's naval record be further corrected by removing the administrative separation documents.

d. That Petitioner's naval record be corrected by removing there from the following fitness reports and related material:

Date of Report	Reporting Senior	Period of From	Report To
30Dec05	[REDACTED]	24May05	31Oct05
30Apr06	[REDACTED]	01Nov05	03Feb06
02Jun06	[REDACTED]	01May06	10May06

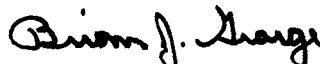
e. That there be inserted in Petitioner's naval record a memorandum in place of the removed fitness reports containing appropriate identifying data concerning the reports; that the memorandum state that the reports have been removed by order of the Secretary of the Navy in accordance with the provisions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

f. 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.


g. 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

  
BRIAN J. GEORGE  
Acting Recorder

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

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

  
1-13-09

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