



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

HD:hd
Docket No. 00148-09
25 June 2009

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

Subj: ~~REDACTED~~
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 9 Nov 08 w/attachments
(2) PERS-311 memo dtd 3 Feb 09
(3) Subject's ltr dtd 10 Mar 09 w/endorsement
and attachments
(4) PERS-811 memo dtd 6 Apr 09
(5) Subject's memo dtd 15 Jun 09 w/endorsement
and attachments
(6) Memo for Record dtd 3 Jun 09

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 "special" enlisted performance evaluation report for 27 August 2007 to 29 February 2008 (copy at Tab A), and that the beginning date of the report for 1 March to 15 June 2008 (copy at Tab B) be changed from 1 March 2008 to 27 August 2007, to cover the period of the report to be removed. Petitioner further requested that the report for 16 June 2006 to 15 June 2007 (extended to 26 August 2007) (copy at Tab C) be filed in his record. This report has been filed. Finally, he requested that his performance mark average (PMA) and final multiple for the September 2008 (Cycle 200) examination for advancement to MM2 (pay grade E-5) be recalculated accordingly and, if it is high enough, that he be retroactively advanced to MM2.

2. The Board, consisting of Ms. LeBlanc and Messrs. Blanchard and J. Hicks, reviewed Petitioner's allegations of error and injustice on 25 June 2009, 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, 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. Enclosure (1) was filed in a timely manner.

c. The USS STENNIS temporarily lost Petitioner's report for 16 June 2006 to 15 June 2007 (extended to 26 August 2007), in which his promotion recommendation (block 45) was "Must Promote" (3.8 for PMA computation purposes). His subsequent station, Naval Station Everett, Washington, submitted the contested "special" report for 27 August 2007 to 29 February 2008, block 43 ("Comments on Performance") of which stated the report was submitted for the purpose of enabling him to establish a PMA (so he could compete in the September 2008 (Cycle 200) examination for advancement). In this report, block 45 was marked "Promotable" (3.6 for PMA).

d. In enclosure (2), PERS-311, the Navy Personnel Command (NPC) performance evaluation office, commented to the effect Petitioner's performance record should remain unchanged, since the contested "special" report was properly submitted to establish a PMA.

e. Enclosure (3) is Petitioner's reply to enclosure (2), maintaining that the contested report should be removed, as it would not have been submitted, had the STENNIS report not been temporarily lost.

f. In enclosure (4), PERS-811, the NPC enlisted advancements office, noted that including the STENNIS report in Petitioner's PMA computation would not have changed the result, as that report was 3.8, which was Petitioner's PMA (his PMA was computed using the average of the contested 3.6 report and the report for 1 March to 15 June 2008 from Naval Station Everett ("Early Promote" (4.0 for PMA))).

g. Enclosure (5) is Petitioner's reply to enclosure (4), noting that if the 3.8 STENNIS report is included in the PMA computation and the contested 3.6 report is excluded, and the

4.0 report for 1 March to 15 June 2008 is again included, his PMA would have been 3.9, which would have raised his final multiple enough for advancement.

h. Enclosure (6) reflects the Naval Education and Training, Professional Development and Technology Center, Pensacola advised that if Petitioner's PMA had been 3.9 instead of 3.8, he would have been advanced to MM2 with a time in rate date of 1 January 2009 and effective date of 16 January 2009.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the recommendation in enclosure (2), the Board finds the existence of an error and injustice warranting partial relief, specifically, removing the contested "special" report.

The Board does concur with enclosure (2) that the "special" report was properly submitted, given that the "STENNIS" report had not yet been located. However, the Board also agrees with Petitioner's point that this report would not have been submitted, had the "STENNIS" report, which is now on file in his record, not been lost.


The Board finds that Petitioner's request to change the beginning date of the report for 1 March to 15 June 2008 should be denied. The Board is unable to find he still would have been marked "Early Promote," had Naval Station Everett given him one report for the period starting 27 August 2007 and ending 15 June 2008. In this regard, the Board particularly notes that the STENNIS report marked him "Must Promote," and the contested "special" report marked him "Promotable."

The Board is likewise unable to find Petitioner's PMA would have been higher, had he not received the "special" report. In this connection, while the Board recognizes that the 3.8 STENNIS report should have been included in the computation, the report for 27 August 2007 to 15 June 2008 that also would have been included, had the "special" report not been submitted, would not necessarily have been "Early Promote," as discussed above. If this report would have been marked anywhere below "Early Promote," Petitioner's PMA of 3.8 would not have been higher.

In view of the above, the Board recommends the following limited 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
25Mar08		27Aug07	29Feb08

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 NPC.

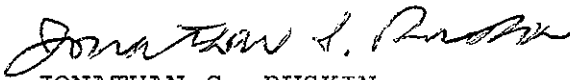
d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

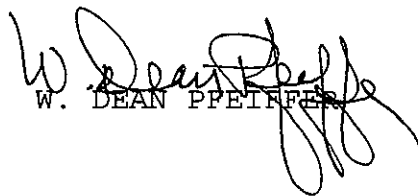
f. That the remainder of Petitioner's request be denied.

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:



7-10-09