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

HD:hd
Docket No. 01196-09
7 May 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 3 Feb 09 w/attachments
(2) PERS-311 memo dtd 24 Feb 09
(3) Subject's ltr dtd 2 Apr 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 16 to 24 March 2008, a copy of which is at Tab A, leaving in her record the "special" report for 25 March to 23 May 2008, a copy of which is at Tab B.

2. The Board, consisting of Ms. Ballinger and Messrs. Mann and Trant, reviewed Petitioner's allegations of error and injustice on 7 May 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, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner received nonjudicial punishment (NJP) on 21 March 2008. The contested "special" report for 16 to

24 March 2008 was submitted, by her department head, to report the NJP. By marking block 45 ("Promotion Recommendation - Individual") "Significant Problems," he indicated he did not recommend her for advancement. The applicable performance evaluation directive, Bureau of Naval Personnel Instruction (BUPERSINST) 1610.10A, permitted him to submit an evaluation report withdrawing Petitioner's recommendation for advancement, on the condition that the commanding officer (CO) review it. Since the advancement manual, BUPERSINST 1430.16F, provided that withdrawal of recommendation for advancement required an evaluation report signed by the CO or officer in charge, Petitioner was permitted to compete for advancement, and her advancement was authorized. To deny Petitioner advancement, the CO submitted the uncontested "special" evaluation report for 25 March to 23 May 2008, which also marked block 45 "Significant Problems," and stated in block 43 ("Comments on Performance") the report was "submitted to withdraw [Petitioner's] advancement recommendation to Petty Officer First Class due to Commanding Officer's Non-Judicial punishment held on 08MAR21."

d. In support of Petitioner's application at enclosure (1), she provided a letter dated 23 January 2009 from the CO, stating it was "not [his] intention to submit two reports of Significant Problems as the two reports will both count toward the evaluation factor in her [advancement] exam final multiple." He further stated "the second evaluation was submitted only because of the conflicting guidance" in BUPERSINST 1610.10A and 1430.16F.

e. In enclosure (2), the Navy Personnel Command (NPC) office with cognizance over the subject matter of Petitioner's case commented to the effect her request should be denied, as both "special" reports are valid under BUPERSINST 1610.10A. This advisory opinion noted that the uncontested report did not mention the punishment awarded at the NJP.


f. In enclosure (3), Petitioner asserted that the advisory opinion at enclosure (2) acknowledged the uncontested report for 25 March to 23 May 2008 had been submitted incorrectly, as it did not mention the punishment awarded at the NJP. She further contended that when the command realized the CO had to sign the evaluation withdrawing the recommendation for advancement, an administrative change to the contested report should have been done, rather than a second report.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an error and injustice warranting relief, specifically, removal of the contested "special" report and modification of the uncontested "special" report by changing the beginning date from 25 to 16 March 2008, the beginning date of the report to be removed. In this connection, the Board finds that had Petitioner's command understood, from the outset, that making Petitioner ineligible for advancement required submission of a "Significant Problems" report signed by the CO, only one such report, signed by the CO, would have been submitted. Accordingly, the Board recommends the following corrective action:

RECOMMENDATION:

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

Date of Report	Reporting Senior	Period of Report	
		From	To
23Mar08		16Mar08	24Mar08

b. That appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

c. That Petitioner's record be corrected further by modifying as follows the enlisted performance evaluation report for 25 March to 23 May 2008, dated 16 July 2008 and signed by Captain H. A. Shelanski, USN:

Block 14 ("Period of Report"): Change "From" date from "08MAR25" to "08MAR16."


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

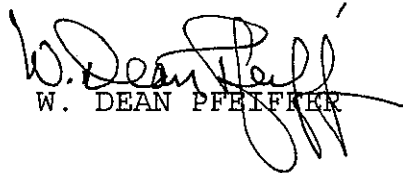
confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

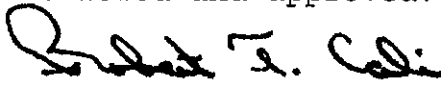
ROBERT D. ZSALMAN
Recorder


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:


5-18-09

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