



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

HD:hd
Docket No. 02370-09
9 October 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 2 Mar 09 w/attachments
(2) OPNAV N135 ltr dtd 15 May 09 w/enclosures
(3) CNO N134 memo dtd 13 Jul 09
(4) PERS-32 memo dtd 16 Jul 09
(5) PERS-80 memo dtd 23 Jul 09
(6) Counsel ltr dtd 19 Sep 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 fitness report for 1 February to 17 August 2006 (copy at Tab A) and modifying the report for 1 February 2007 to 31 January 2008 (copy at Tab B) by changing the body composition entry in block 20 ("Physical Readiness") from "NS" (not within standards) to "MW" (medically waived), removing the marks in blocks 35 ("Military Bearing"), 42 ("Promotion Recommendation - Individual") and 43 ("Promotion Recommendation - Summary") and removing from block 41 ("Comments on Performance") any related verbiage. He also requested, in the event of his failure of selection to lieutenant commander, consideration by a special selection board (SSB). He has not failed of selection to lieutenant commander, so the Board did not consider this request.

2. The Board, consisting of Messrs. Dunn, Grover and Sproul, reviewed Petitioner's allegations of error and injustice on 8 October 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, 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. In enclosure (2), OPNAV N135, the Chief of Naval Operations (CNO) office with cognizance over physical readiness, commented to the effect that the body composition entry in block 20 of the fitness report for 1 February 2007 to 31 January 2008 should be corrected, as Petitioner requested, from "NS" to "MW."

c. In enclosure (3), CNO N134, the CNO office with cognizance over equal opportunity matters, commented to the effect Petitioner has not demonstrated that the contested fitness report for 1 February 2006 to 17 August 2006 was the product of religious discrimination.

d. In enclosure (4), PERS-32, the Navy Personnel Command (NPC) office with cognizance over performance evaluations, commented to the effect that the report for 1 February 2007 to 31 January 2008 should be modified by changing the body composition entry in block 20 from "NS" to "MW" and removing from block 41 comments on Petitioner's having failed the body composition assessment (BCA). PERS-32 stated they had been unable to contact the reporting senior as to whether the marks in blocks 35, 42 and 43 were based on Petitioner's BCA failure.

e. In enclosure (5), PERS-80, the NPC office with cognizance over enlisted advancements, recommended Petitioner be granted an SSB if this Board approves his request to correct his fitness report record. He has not failed of selection, so he is ineligible for SSB consideration.

f. In enclosure (6), Petitioner's counsel insisted Petitioner had been the victim of religious discrimination.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (2) through (4), the Board finds an error and injustice warranting the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying as follows the fitness report for 1 February 2007 to 31 January 2008, signed by [REDACTED] USMC and dated 13 February 2008:

- (1) Block 20: Change body composition entry from "NS" to "MW."
- (2) Block 35: Remove mark of "2.0."
- (3) Block 41: Remove "35. Military Bearing: [Petitioner] did not pass the Body Composition Analysis with body fat percentages of 24% and 28%."

b. That there be inserted in his record a memorandum in place of the mark to be removed containing appropriate identifying data; that the memorandum state that the mark in block 35 of the fitness report for 1 February 2007 to 31 January 2008 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 mark.

c. 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.

d. 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.

e. 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
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
For W. DEAN PFEIFFER
Executive Director