



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

HD:hd
Docket No. 05164-11
5 September 2011

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 30 Apr 11 w/attachments
(2) PERS-32 memo dtd 7 Jun 11 w/attachment
(3) Counsel's ltr dtd 19 Aug 11 w/attachments

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 August 2007 to 30 April 2008 and related correspondence (copy at Tab A).

2. The Board, consisting of Messrs. Gorenflo, Grover and Spooner, reviewed Petitioner's allegations of error and injustice on 1 September 2011, 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. Enclosure (1) was filed in a timely manner.

c. While Petitioner was assigned to the U. S. Defense Attaché Office, Lisbon, Portugal, the same Air Force reporting senior, a colonel, gave him two fitness reports, the uncontested commendatory report for 8 April 2006 to 31 July 2007 (copy at Tab B) and the contested adverse report, submitted on the occasion of Petitioner's

detachment. The uncontested report assigned Petitioner straight marks of "5.0" (highest of five possible marks) and in block 42 ("Promotion Recommendation - Individual") marked him "Early Promote" (highest of five possible marks). The block 41 narrative was fully favorable. The contested report assigned Petitioner straight marks of "3.0" (mid-range) and in block 42 marked him "Must Promote" (second best). The block 41 narrative stated Petitioner was "Returned to Service due to unsuitability for attaché assignment and failure to meet minimum performance expectations." Concerning block 33 ("Professional Expertise"), it said "Has difficulty adapting to his main joint DIA [Defense Intelligence Agency] mission and attaché operational activity. Has not developed the operational mindset that allows him to develop and exploit the access he needs to fully conduct attaché operations." Regarding block 34 ("Command or Organizational Climate/Equal Opportunity"), it said "In private has made comments about having problems communicating with Americans of another cultural background." About blocks 35 ("Military Bearing/Character") and 36 ("Teamwork"), it said "Often displays a penchant to challenge peers and superiors whether military or civilian. Resorts easily to acrimonious discussion. Can be an excellent team-player when he agrees with team goals; when he does not he can be very difficult in accepting direction." Finally, with respect to blocks 37 ("Mission Accomplishment and Initiative") and 38 ("Leadership"), it stated the following:

Capable of great work though he is not a good planner and often fails to prioritize according to direction. Often hard to get him to focus on team goals. Displays an impulsive, strong personality that at times overcomes good judgment. Example, feeling wronged, he jumped two levels of DIA chain of command to call a very senior officer over a finance issue that he had not given intermediate supervisors a chance to pursue.

In block 46, Petitioner indicated that he intended to submit a statement, but no statement is in the record.

d. On 19 November 2007, the reporting senior requested Petitioner's detachment for cause for alleged unsatisfactory performance, but on 29 January 2008, the DIA returned Petitioner to service without prejudice (exhibit 16 to Petitioner's application at enclosure (1)).

e. On 24 July 2008, Petitioner submitted a complaint of wrongs under Article 138, Uniform Code of Military Justice (later styled a complaint under Article 1150, U. S. Navy Regulations) (exhibit 4 to Petitioner's application at enclosure (1)) about the contested

fitness report. The first endorsement, from the Director of Information, Plans and Security, Office of the Chief of Naval Operations (exhibit 6 to Petitioner's application at enclosure (1)), strongly recommended that the report at issue be removed. The second endorsement, from the Deputy Chief of Naval Operations, Information, Plans and Strategy (exhibit 7 to Petitioner's application at enclosure (1)), concurred with the first endorsement. The third endorsement, from the Director, DIA (exhibit 8 to Petitioner's application at enclosure (1)) made no recommendation. The fourth endorsement (exhibit 9 to Petitioner's application at enclosure (1)) was from the reporting senior, enclosing an e-mail detailing shortcomings he had noted in Petitioner's performance. The fifth endorsement, from the Commandant, Naval District Washington (exhibit 10 to Petitioner's application at enclosure (1)), recommended approving Petitioner's request. The final decision of 31 August 2009, by the Air Force major general who was the Commander, Headquarters Air Force District of Washington (exhibit 11 to Petitioner's application at enclosure (1)), was to deny relief.

f. Petitioner provided a supporting statement from a Navy commander (now captain) (exhibit 12 to Petitioner's application at enclosure (1)) showing that "there was a 'personal dimension' to [Petitioner's] dismissal" and that Petitioner and the reporting senior "had differing personalities [that] made him difficult to work with and was contributory to his decision making process." Specifically concerning the example the reporting senior cited with regard to the marks in blocks 37 and 38, Petitioner asserts he contacted higher authority about the issue of his wife's travel expenses only after he had failed to get a satisfactory response from the reporting senior.

g. In enclosure (2), the Navy Personnel Command (NPC) office having cognizance over the subject matter of Petitioner's case commented to the effect the request should be denied.

h. Enclosure (3) is Petitioner's counsel's response to the NPC advisory opinion. She provided supporting statements (enclosures E and F) to corroborate Petitioner's contention that he did not deserve an adverse fitness report.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an injustice warranting the requested relief. In this connection, the Board finds the contested fitness report totally inconsistent with the previous report from the same reporting senior, which covered a

longer period of over a year. Further, the Board finds the contested report to be internally contradictory, in that the marks, particularly the promotion recommendation, are much too high to be consistent with the adverse comments. In addition, the Board finds this report goes against the action of DIA returning Petitioner to service without prejudice. Finally, the Board is persuaded that the example the reporting senior gave to support the marks in blocks 37 and 38 is invalid, as Petitioner did nothing wrong. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

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

Date of Report	Reporting Senior	Period of Report	
		From	To
2Apr08	[REDACTED]	1Aug07	30Apr08

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 the 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 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.

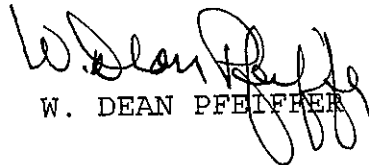
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



JONATHAN S. RUSKIN
Acting Recorder

ROBERT D. ZSALMAN
Recorder

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



W. DEAN PFEIFFER

Reviewed and approved:

9/16/11



ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000