



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

HD

Docket No. NR11866-14
12 March 2015

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 1 Oct 13 w/attachment
(2) HQMC MMRP-13/PERB memo dtd 15 Apr 14
(3) Undtd notes reflecting basis for PERB action
(4) HQMC MIQ memo dtd 6 Jan 15
(5) Subject's ltr dtd 14 Feb 15
(6) Subject's naval record

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 January to 4 March 2011 (copy at Tab A) and the service record page 11 ("Administrative Remarks (1070)") counseling entry dated 3 March 2011 with his undated rebuttal (copies at Tab B). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness report.

2. The Board, consisting of Mses. Davis, Trucco and Wilcher, reviewed Petitioner's allegations of error and injustice on 12 March 2015, 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. The page 11 entry at issue counsels Petitioner for "Violation of the UCMJ [Uniform Code of Military Justice] Article 92 by involving yourself in an inappropriate relationship with the spouse of another service member."

d. Enclosure (3) shows that the PERB basis for removing the contested fitness report included a finding that the page 11 entry in question, which was cited in the fitness report, "was not substantiated."

e. In the advisory opinion at enclosure (4), the HQMC office with cognizance over page 11 entries has commented to the effect that the contested entry should stand, stating "[Petitioner] has not provided substantial evidence to support his claim that the page 11 entry was in error or unjust."

f. In enclosure (5), Petitioner's response to the advisory opinion, he noted that he received the page 11 entry the day before his transfer flight from his duty station in England. He objected that he was given less than 24 hours to reply to the entry, which allowed him no chance to consult with an attorney or a senior enlisted advisor. He maintained that there was no inappropriate relationship between himself and the other service member's spouse. Finally, he contended that had there been any proof or evidence of a violation of the UCMJ by an inappropriate relationship, his transfer should have been delayed, and he should have been the subject of nonjudicial punishment or court-martial proceedings:

CONCLUSION:

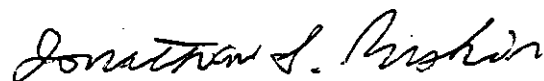
Upon review and consideration of all the evidence of record, and notwithstanding enclosure (4), the Board finds an injustice warranting removal of the page 11 entry. In this regard, the Board concurs with the finding of the PERB that the entry was, as Petitioner contends, unsubstantiated. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 3 March 2011 and Petitioner's undated rebuttal, which begins "I received a Page 11 entry the day prior to flying out of the UK." This is to be accomplished by physically removing the page 11 on which the entry appears and the rebuttal, or completely obliterating the entry and rebuttal so they cannot be read, rather than merely lining through them.

b. 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.

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
Recorder

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



ROBERT J. O'NEILL

Reviewed and approved:

3/17/15



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