



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 06612-98

27 August 1999

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

Subj: LCD [REDACTED] CHC, USN(RET) [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 31 Aug 98 w/attachments
(2) NPC-311 memo dtd 9 Mar 99
(3) NPC-61 memo dtd 29 Mar 99
(4) PERS-85 memo dtd 16 Aug 99
(5) Subject's ltr dtd 11 Jun 99
(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 31 December 1985, a copy of which is at Tab A. Petitioner also impliedly requested removal of his failures of selection for promotion before the Fiscal Year (FY) 96 through 99 Commander Staff Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade. Finally, he requested that he be granted a special selection board and if selected, be recalled to active duty and promoted to reflect an FY 96 selection. By reason of his failures of selection for promotion, he was involuntarily retired on 1 October 1998.

2. The Board, consisting of Messrs. Bartlett, Ensley and Schultz, reviewed Petitioner's allegations of error and injustice on 19 August 1999, 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. Petitioner contends that the fitness report in question is biased and unfair and that this one fitness report caused his failure to be selected for promotion to commander. He alleges the grades of "C" in judgment and "B" in analytical ability were assigned by his command chaplain and signed by the reporting senior; that the reason given by the command chaplain for the lowered grades was that he "dated"; that he was single at the time and had never been married; that the command chaplain was a Roman Catholic priest who stated that it was "'inappropriate for chaplains to date,' 'it presented the wrong image' and 'if a chaplain came on active duty not yet married, it was just too bad.'"; and that he did date during the period in question, but dated only civilians and other officers who were unmarried and female, and therefore crossed no lines of fraternization or impropriety.

c. In correspondence attached as enclosure (2), NPC-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has recommended that Petitioner's fitness report record remain unchanged. They further recommended that the petition be forwarded to NPC-85 for comments on Petitioner's request for the convening of a special selection board, and if selected, recall to active duty and promotion retroactive to FY 96; and to NPC-61, the equal opportunity/professional relationships office, for comment on his request to remove the fitness report. Finally, they stated that should NPC-61 find merit in his allegation of unjust and prejudicial grades on the fitness report in question, they would have no objection to removing the report.

d. In correspondence attached as enclosure (3), NPC-61 has recommended removing the contested fitness report, commenting that the "C" in judgment may have been a result of the senior chaplain's biased opinion of dating by Protestant chaplains; that the commanding officer who signed the report wrote several letters to the selection board on Petitioner's behalf stating that if possible, he would change the "B" and "C" grades assigned in 1985 to "A"; and that Petitioner's record is outstanding except for the contested report.

e. In correspondence attached as enclosure (4), PERS-85, the NPC office having cognizance over active duty promotions, has commented to the effect that Petitioner's request for a special promotion selection board should be disapproved. They stated that "Removal of the [contested fitness] report would not substantially improve the competitiveness of his record amongst his peers."

f. Petitioner's letter at enclosure (5) is in rebuttal of enclosures (2) and (4). He reiterates his belief that the senior chaplain intended for the fitness report in question to be punitive, and that it was not an accurate reflection of the quality of his performance. He maintains that not only was the fitness report intentionally unjust and illegally punitive, but it "stands out as the singular moment in an otherwise stellar career that is without further blemish and inferior to none." He argues that if that report is confirmed to be unjust, then it is also reasonable and logical to assume that it is the sole basis for his failure to select, "thus meeting the definition of injustice for which a special board is mandated by Navy regulation."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board finds the existence of an injustice warranting partial relief, specifically, removal of the contested fitness report for 1 January to 31 December 1985.

The Board finds Petitioner's failures by the FY 96 through 99 Staff Commander Selection Boards should stand. In this regard, they agree with the advisory opinion at enclosure (4) in finding that removal of the contested fitness report would not have appreciably enhanced his competitiveness for promotion. Since the Board finds insufficient basis to remove his failures of selection for promotion, they have no grounds to grant him consideration by a special selection board or set aside his retirement of 1 October 1998.

In view of the above, the Board directs the following limited 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 From	of	Report To
86Jan13	 USN	85Jan01		85Dec31

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.

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

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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. 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
Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
NPC-311
9 March 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: LCDR [REDACTED], USN (RE [REDACTED])

Ref: (a) BUPERSINST 1611.1

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 January 1985 to 31 December 1985.

2. Based on our review of the material provided, we find the following:

a. A review of the member's record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the report and his rights. The member did not desire to make a statement.

b. The member's claim that the marks on the fitness report are not substantiated by the comments in block-88 does not mean that the marks are unmerited. A decline in marks should be explained in the comment section. However, the absence of an explanation does not invalidate the fitness report. A report may be marked "consistent" even though two marks are lower than on previous reports. The trend mark is determined not by the up or down changes in letter grades, but by the direction of the overall performance as judged by the reporting senior.

c. The fitness report has been in Lieutenant Commander [REDACTED] record for over ten years. If he felt the report was unjust or in error he could have submitted a statement for inclusion in his record. Neither the member nor the reporting senior has provided any explanation for failing to make reasonable efforts to correct the alleged errors before now.

d. Lieutenant Commander [REDACTED] bases his request on the belief that the fitness report in question is the sole reason for his failure to select for promotion to commander. The fact that a fitness report may adversely affect a member's promotion opportunity is not sufficient reason to remove it from his record.

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e. Lieutenant Commander [REDACTED] provided several very impressive letters of support in his petition. While their comments add insight and reflect favorably on LCDR [REDACTED] performance, they do not show that the fitness report was in error or unjust.

f. The member does not prove the report to be unjust or in error.

3. We recommend LCDR [REDACTED] record remains unchanged.

4. We recommend the member's petition be forwarded to the Director, Active Officer Promotion, Appointments, and Enlisted Advancement Division (NPC-85) for comments of the member's request for the convening of a special selection board and if selected, be recalled to active duty and promoted retroactive back to FY-96 Commander selection board, and NPC-61 for comments on the member's allegation of unjust, and prejudicial grades on his fitness report for the period 1 January 1985 to 31 December 1985.

5. Should the member's allegation be found to have merit, we have no objection to remove the fitness report for the period 1 January 1985 to 31 December 1985.

[REDACTED]

Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

6612-98

1610
NPC-61/016
29 Mar 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, Pers-00ZCB

Subj: LCDR [REDACTED] CHC, USN (RET), [REDACTED]

Ref: (a) OPNAVINST 5354.1D Equal Opportunity Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 January 1985 to 31 December 1985.
2. A review of his fitness reports throughout his career indicated the member to be a top performer. It is clear that the report in question is an anomaly. The commanding officer that signed the report wrote several letters to the selection board on the member's behalf and stated that if possible he would change the B and C grades assigned in 1985 to A grades.
3. The member claims the senior chaplain was Catholic and did not approve of any chaplain dating. The member admits to dating. The member believes this was the error in judgment that was referred to on his fitness report. If true, this would be discriminatory per reference (a).
4. Based on the information presented, it is reasonable to believe that the C in judgment may have been a result of the senior chaplain's biased opinion of dating by Protestant chaplains. The member's record is outstanding except for this one report. I recommend the report be removed from his record.



Director, Professional
Relationships Division

6612-98

**DEPARTMENT OF THE NAVY****NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**5420
Ser. 85/163
16 Aug 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED] USN [REDACTED]

Ref: (a) NPC-311 ltr 1610 of 9 Mar 99

Encl: (1) BCNR File

1. Enclosure (1) is returned recommending disapproval of LCDR [REDACTED] request for a special promotion selection board. The fitness report was valid and uncontested and LCDR [REDACTED] exercised his right to communicate with the president of the FY-96 and FY-98 promotion selection boards concerning the character of that report.

2. His record before each selection promotion board that he was eligible for was complete and portrayed a fair and accurate portrayal of his career. Removal of the report would not substantially improve the competitiveness of his record amongst his peers.

3. Recommend disapproval of a special board.

[REDACTED]

BCNR Liaison, Officer Promotions
and Enlisted Advancements Division