



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

HD:hd
Docket No: 07085-00
28 August 2001

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

Subj: LT CO. [REDACTED], MC, USNR [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 12 Oct 00 w/attachments
(2) PERS-311 memo dtd 17 Jan 01
(3) BUPERS Ser 833D memo dtd 2 Mar 01 w/enclosure
(4) PERS-06L6 memo dtd 27 Mar 01
(5) 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 all adverse materials which resulted from his nonjudicial punishment (NJP) dated 18 June 1999. He further requested removal of the fitness report for 1 February to 8 July 1999 and the Deputy Secretary of Defense letter of 18 April 2000 which removed his name from the report of the Fiscal Year 2000 Active Lieutenant Commander Staff Selection Board. Copies of the contested fitness report and letter are at Tabs A and B, respectively.

2. The Board, consisting of Messrs. Cooper, Swarens and Taylor, reviewed Petitioner's allegations of error and injustice on 23 August 2001, 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 all adverse material in his official record was the result of a punitive letter of reprimand which was determined to be unjust, in light of the results of a fact finding investigation, and has since been set aside.

c. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has recommended approving Petitioner's request to remove the contested fitness report. They stated that the Commanding Officer, Submarine Squadron Support Unit, Norfolk letter of 13 April 2000 set aside Petitioner's NJP; that the fitness report comments concerning the NJP and the mark in block 33 ("Professional Expertise") are now considered to be inappropriate; and that they recommend removing the fitness report, as they cannot determine the mark or promotion recommendation Petitioner now deserves.

d. In correspondence attached as enclosure (3), PERS-833, the Bureau of Naval Personnel office having cognizance over officer post-selection board matters, has commented that on 18 April 2000, they were notified that action had been taken to set aside Petitioner's NJP; that on 18 April 2000, the Deputy Secretary of Defense signed the contested letter and it was staffed for forwarding to the White House; that on 19 April 2000, they notified the chain of command, which included the Chief of Naval Personnel's legal counsel, that Petitioner's NJP had been set aside; that on 20 April 2000, they were notified that the Deputy Secretary of Defense had signed the letter and it was forwarded to the White House on 20 April 2000; and that on 24 April 2000, the Chief of Naval Personnel's legal counsel advised them that in discussion with the Chief of Naval Operations legal counsel and the Secretary of the Navy's legal counsel, it was determined that it was too late to change the language in the letter, and it was also determined that although Petitioner's NJP had been set aside, the misconduct still occurred, so his removal from the promotion board report was still appropriate. PERS-833 recommends disapproving Petitioner's request to remove the letter which removed his name from the promotion board report. Instead, they recommend redacting the language pertaining to the NJP and the punitive letter of reprimand. They specifically recommend striking out or blackening "For this conduct, [Petitioner] received a punitive letter of reprimand for dereliction of duty" and "...and did not appeal his nonjudicial punishment."

e. In correspondence attached as enclosure (4), PERS-06L6, the NPC Office of Legal Counsel, has commented that they recommend favorable action on Petitioner's request to have removed from his permanent record all reference to the NJP which has been set aside, but do not recommend favorable action on his request to remove the contested letter.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), (3) and (4), the Board finds the existence of an injustice warranting 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 of Report	
		From	To
99Jul09	CAPT ██████████ N	99Feb01	99Jul08

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 his naval record be corrected further by modifying as follows the Deputy Secretary of Defense memorandum for the President dated 18 April 2000:

(1) From the second paragraph, delete the entire second sentence, which reads as follows: "For this conduct, [Petitioner] received a punitive letter of reprimand for dereliction of duty."

(2) From the second paragraph, delete the following portion of the third sentence: "and did not appeal his nonjudicial punishment" so this sentence as corrected will read as follows: "[Petitioner] admitted culpability."

d. That any other reference to Petitioner's NJP of 18 June 1999 be removed from his naval record.

e. 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.

f. 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.

g. 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
PERS-311
17 January 2001

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

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) CO, Submarine Squadron Support Unit, Norfolk ltr 1910 SN00 Ser/214 of 13 April 00

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 February 1999 to 8 July 1999.

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

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did desire to submit a statement. PERS-311 has not received the member's statement and the reporting senior's endorsement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement or provide justification acceptable to BUPERS for the delay.

b. The fitness report in question is a Detachment of Individual/Regular report. The member alleges the fitness report was unjustly placed in his record.

c. Reference (b) set aside the member's non-judicial punishment on 13 April 2000. Per reference (a), Annex S, paragraph S-12, the comments concerning the member's NJP and his performance trait mark in block-33 are now considered to be inappropriate.

d. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report in question, as we cannot determine the trait mark or the member's promotion recommendation he now deserves.



Head, Performance
Evaluation Branch



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

1400
Ser 833D/0020
2 Mar 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters, Pers-00ZCB

Subj: RECOMMENDATION IN CASE OF [REDACTED]
USN [REDACTED]

Ref: (a) NAVPERSCOM ltr 5420 Ser Pers-00ZCB of 5 Feb 01
(b) DEPSECDEF memo of 18 Apr 00
(c) BUPERS ltr 1426 Ser 834C/769 of 20 Jun 00

Encl: (1) BCNR File
(2) Redacted DEPSECDEF memo of 18 Apr 00

1. In response to reference (a), enclosure (1) is returned. The member requests the removal of reference (b) from his official service record.

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

a. A review of the member's headquarter record revealed that on 18 April 2000, Navy Personnel Command (PERS-833) was notified that on 13 April 2000, Commanding Officer, Submarine Squadron Support Unit, Norfolk set aside [REDACTED] nonjudicial punishment. On 18 April 2000, the Deputy Secretary of Defense signed reference (b) and it was staffed for forwarding to the White House. On 19 April 2000, PERS-833 notified the chain of command, which included the Chief of Naval Personnel's legal counsel, that LT Fotopoulos' nonjudicial punishment was set aside. On 20 April 2000, PERS-833 was notified that the Deputy Secretary of Defense signed reference (b) on 18 April 2000 and it was forwarded to the White House on 20 April 2000. On 24 April 2000, Chief of Naval Personnel's legal counsel advised PERS-833 that in discussion with Chief of Naval Operation's legal counsel and the Secretary of the Navy's legal counsel, it was determined that it was too late to change the language in reference (b). It was also determined that although [REDACTED] nonjudicial punishment was set aside, the misconduct still occurred and that removal from the

Subj: RECOMMENDATION IN CASE OF LT CONSTANT [REDACTED]

promotion list was appropriate. PERS-833 was further advised that if the member wished, he could petition BCNR to have the sentence pertaining to the punishment deleted from the memo. On 2 May 2000, the President signed reference (b), constituting the removal of [REDACTED] name from the FY-00 Active Lieutenant Commander Staff Selection Board Report. Reference (c) forwarded [REDACTED] a copy of reference (b).

3. Recommend disapproving [REDACTED]' request to have the letter from the President of the United States, which removed his name from the Lieutenant Commander Selection Board, removed from [REDACTED] service record.

4. Instead, recommend the following:

a. Redact the sentence pertaining to the nonjudicial punishment and the punitive letter of reprimand from reference (b). Specifically, strike out or blacken, "For this conduct, Lieutenant [REDACTED] received a punitive letter of reprimand for dereliction of duty." Also delete, "...and did not appeal his nonjudicial punishment." Enclosure (2) is provided as the document to replace reference (b).

b. Recommend that the legal counsels of Navy Personnel Command, Chief of Naval Personnel and Judge Advocate General also review the matter before a decision is made.

5. PERS-833's concern is if reference (b) and reference (c) are removed in their entirety, a subsequent selection board will not be aware that [REDACTED] was previously removed from the FY-00 Active Lieutenant Commander Staff Promotion Selection Board Report. A subsequent selection board's decision to select LT [REDACTED] would not be a fully informed decision.

[REDACTED]

Lieutenant Commander, U.S. Navy
Branch Head,
Officer Post-Selection Board
Matters



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010



APR 18 2000

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Removal of Name From Selection Board Report

On behalf of the Secretary of Defense, I recommend you remove the name of Lieutenant [REDACTED] Fiscal Year 2000 Active Lieutenant Commander Staff Board Report under the provisions of Title 10, United States Code, Section 618.

Lieutenant Fotopoulos failed to perform a physical exam on a patient, newly diagnosed as pregnant, yet made extensive medical entries in her chart indicating that he had performed the exam. [REDACTED]

[REDACTED] Lieutenant Fotopoulos admitted culpability [REDACTED] This information was not available to the selection board. Accordingly, the Secretary of the Navy recommends that the President remove his name from the selection board report.

Your signature below will constitute removal of Lieutenant [REDACTED] name from the selection board report.

[REDACTED SIGNATURE]

495-60-2569
08/166/37

APPROVED: William S. Clinton
President of the United States

May 2, 2000

Date

W60934-00



DEPARTMENT OF THE NAVY

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

MAR 27 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant For BCNR Matters, Pers-00ZCB

Subj: REQUESTS FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LT [REDACTED] US [REDACTED]

Ref: (a) 10 U.S.C. 624
(b) SECNAVINST 1420.1A of 8 Jan 91
(c) DOD memo of 18 Apr 00

1. Per references (a) and (b), there is no requirement that there be adjudication of misconduct prior to the delay of an officer's promotion. The Secretary of the Navy may take such action whenever there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If such evidence is substantiated, the Secretary may request that the President of the United States remove the officer's name from the board report of those officers selected for promotion.

2. The case [REDACTED] was reviewed after the set aside of his NJP and it was determined that there existed substantiated adverse matter supporting the removal action. Nothing in the set aside action itself indicated that LT [REDACTED] as innocent of the alleged misconduct.

3. I recommend favorable action on [REDACTED] request to have removed from his permanent record all reference to the NJP set aside. I do not recommend favorable action on his request to remove reference (c) from his record.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Legal Counsel