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

SMC
Docket No: 01310-00
15 June 2000

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

Subj: CTR2 [redacted] USN, [redacted]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 20Jan00 w/attachments
(2) PERS-311 memo dtd 19May00
(3) 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 enlisted performance evaluation reports for 16 March 1998 to 15 March 1999 and 16 March to 13 May 1999. Copies of these reports are at Tabs A and B.

2. The Board, consisting of Messrs. Frankfurt, Ivins and Zarnesky, reviewed Petitioner's allegations of error and injustice on 15 June 2000, 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. In correspondence attached as enclosure (2), the Navy Personnel Command office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that his request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation reports and related material:

Date of Report	Reporting Senior	Period of Report From	To
10Mar99	LCDR J[redacted]	16Mar98	15Mar99
12May99	LCDR J[redacted]	16Mar99	13May99

a. That there be inserted in Petitioner's naval record ONE memorandum to replace the removed reports, containing appropriate identifying data concerning the reports; that such memorandum state that the reports have 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 reports.

b. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

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. 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

For 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

1310-00

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

1610
PERS-311
19 May 2000

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

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

Subj: CTR[redacted], USN, [redacted]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) DON Inspector General, Naval Security Group Command letter 5041 Ser N00IG/019 of 8 June 1999

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests changes to his performance evaluation for the period 16 March 1998 to 15 March 1999, and 16 March 1999 to 13 May 1999.

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

a. A review of the member's headquarters record revealed both evaluations to be on file. Both reports are signed by the member acknowledging the contents of each report and his right to submit a statement. The member indicated he did desire to submit a statement for the report ending 15 March 1999. The member's statement and reporting senior's endorsement has not been received by PERS-311. The member did not desire to submit a statement for the report ending 13 May 1999. The member has two years from the ending date of the report to submit a statement.

b. The member alleges unfair treatment because his March 1999 evaluation marks were lowered undeservedly and in retaliation by his chief. Evaluating a member's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior. These duties are accomplished in the performance evaluation. In viewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decision, and whether the reporting senior actions were the result of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, he must provide evidence to support the claim. I believe Petty Office[redacted] has done so.

1310-00

c. Based on reference (b), we believe the performance evaluation for the periods 16 March 1998 to 15 March 1999 and 16 March 1999 to 13 May 1999 should be removed from Petty Officer [redacted] record.

d. Further review of the member's record revealed the performance evaluation for the period 19 April 1995 to 27 June 1996 missing from his record. If the member will forward a copy of the report we will have placed in the member's digitized record.

e. The member proves the reports to be unjust or in error.

3. We recommend removal of the performance evaluation in question.

[redacted]

Head, Performance
Evaluation Branch