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

SMC
Docket No: 03435-00
2 October 2000

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

Subj: IT2[redacted] USNR (TAR), [redacted]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 10Mar00 w/attachments
(2) Subject's ltr dtd 19Sep00
(3) PERS-311 memo dtd 5Jul00
(4) PERS-862 memo dtd 15Aug00
(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 the enlisted performance evaluation report for 16 March 1996 to 15 March 1997. A copy of this report is in enclosure (1) at Tab A. By his letter at enclosure (2), he amended his application to request that the report be modified in accordance with the recommendation of the Navy Personnel Command (NPC) (PERS-311), in their advisory opinion at enclosure (3); and that he be advanced to IT1 (pay grade E-6).

2. The Board, consisting of Mses. Moidel and Schnittman and Mr. Schultz, reviewed Petitioner's allegations of error and injustice on 28 September 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 the performance evaluation report in question, block 40 ("Individual Trait Avg.") reflects "3.00," which is based on the marks assigned in blocks 33 through 39: block 34 ("Quality of Work") is marked "1.0" ("Below Standards"); the other marks comprising the block 40 average are four of "3.0" ("Meets Standards") and two of "4.0" ("Above Standards"). Block 43 ("Comments on Performance") includes the following:

* 34 (Quality of Work) Awarded Commanding Officer's non-judicial punishment due to his failure to maintain CMS [classified material security] two person integrity.

Block 45 ("Promotion Recommendation - Individual") shows a mark of "Significant Problems [lowest possible]." Block 46 ("Promotion Recommendation - Summary") shows Petitioner as the only petty officer second class marked "Significant Problems."

c. In correspondence attached as enclosure (3), PERS-311, the NPC Performance Evaluation Branch, has commented to the effect that the contested performance evaluation report should be amended, rather than removed. They recommended changing blocks 34 and 45 to "NOB" (not observed), as they could not determine the performance mark or promotion recommendation Petitioner deserves. They further recommended deleting from block 43 the language quoted at paragraph 3.b above.

d. In correspondence attached as enclosure (4), PERS-862, the NPC Naval Reserve Enlisted Advancement Branch, has commented that changing the negative promotion recommendation to "NOB" creates a significant change in Petitioner's performance mark average for the purpose of computing final multiple for advancement. They concluded that recomputation of Petitioner's final multiple results in his achieving a final multiple high enough to be advanced to RM1 (pay grade E-6). They recommended that his record be corrected to reflect he was advanced to IT1 effective 16 July 1999, with a time in rate date of 1 July 1999.

e. On 16 July 1999, Petitioner's rating was "RM." Effective 1 October 1999, this rating was converted to "IT."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (3) and (4), the Board finds the existence of an injustice warranting approval of Petitioner's request.

The Board notes that changing the mark in block 34 of the contested performance evaluation report to "NOB" requires changing block 40 accordingly, to "3.33." They further find that changing the mark in block 45 requires changing block 46 accordingly.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying his enlisted performance evaluation report for 16 March 1996 to 15 March 1997, signed by Lieutenant Commander [redacted] USNR and dated 16 March 1997, as follows:

(1) Block 34 ("Quality of Work"): Change from "1.0" to "NOB."

(2) Block 40 ("Individual Trait Avg."): Change from "3.00" to "3.33."

(3) Block 43 ("Comments on Performance"): Remove the following:

* 34 Quality of Work Awarded Commanding Officer's non-judicial punishment due to his failure to maintain CMS two person integrity.

(4) Block 45 ("Promotion Recommendation - Individual"): Change from "Significant Problems" to "NOB."

(5) Block 46 ("Promotion Recommendation - Summary"): Change "1" under "Significant Problems" to "0."

b. That Petitioner's naval record be corrected further to show he was advanced to RM1, pay grade E-6, effective 16 July 1999, with a time in rate date of 1 July 1999.

c. That Petitioner's naval record be corrected further to show that his rating conversion was from RM1 to IT1, rather than RM2 to IT2.

d. That any material or entries 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.

e. 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.

Jonathan S. Ruskin

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

3438-00

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

1610
PERS-311
5 July 2000

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

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

Subj: IT2[redacted]

Ref: (a)[redacted](FFG-11) ltr 5800 Ser 00/008 dated 16 JAN 1998
(b) Chief of Naval Personnel ltr 5800 Pers-832C dated 28 May 1998
(c) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 March 1996 to 15 March 1997.

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

a. A review of the member's headquarters record did not reveal the report in question to be on file. However, the member provided a copy with his petition. We are in the process of having it placed in the member's digitized record.

b. The performance evaluation is a Periodic/Regular report signed by the member on 16 March 1997. The report states the member received CO's NJP.

c. Reference (a) set aside the member's NJP on 16 January 1998 and reference (b) indicated action had been taken to ensure no documentation regarding the member receiving NJP was filed in his record. Per reference (c), Annex S, paragraph S-12, the comments in the original report are now considered inappropriate.

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

3. We recommend block-34 be changed to NOB, block-45 be changed to NOB as we cannot determine the performance mark or promotion recommendation the member now deserves, and deletion of the following from block-43:

"#34 (Quality of Work) Awarded Commanding Officer's non-judicial punishment due to his failure to maintain CMS two person integrity."

[redacted]

Head, Performance
Evaluation Branch

3435-00

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

5420
PERS-862
AUG 15 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF IT2 [redacted] USNR(TAR) [redacted]

Ref: (a) Assistant for BCNR Matters 5420 (PERS-00ZCB) Memo of 17 Jul 00

Encl: (1) BCNR File

1. Per reference (a), the following comments and recommendations are submitted concerning Petty Office [redacted] case.

2. The removal of the adverse evaluation report and replacement with an evaluation containing an NOB promotion recommendation created a significant change in Petty Officer [redacted] performance mark average for the purpose of computing final multiple for advancement. We reviewed all cycles affected by this action and determined the following:

a. The first cycle affected was the March 1997 (Cycle 155) exam. This examination was invalidated by his activity due to the withdrawal of advancement recommendation by the removed performance evaluation. Had his recommendation not been removed, he would not have achieved a final multiple high enough to be advanced.

b. The adverse report apparently was not computed into the performance mark average for the September 1997 (Cycle 156) examination. His performance mark average was computed at 3.70, which was actually higher than the performance mark average for the previous cycle. Even with the erroneously computed performance mark average, he did not achieve a final multiple high enough to be advanced.

c. Recomputing his final multiple with a performance mark average adjusted up for the removed evaluation for the March 1998 (Cycle 159) and September 1998 (Cycle 160) did not result in his achieving a final multiple high enough to be advanced.

d. Recomputation of Petty Officer [redacted] final multiple for the March 1999 (Cycle 163) did result in his achieving a final multiple high enough to be advanced to RM1. His performance mark average including the adverse report was 3.20. Removal of this

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report from the computation results in a 3.80 performance mark average. This changes his final multiple from 180.25 to 216.25. The final multiple required to be advanced was 203.58.

3. In view of the above, we recommend the following corrections be made to Petty Office[redacted] record.

E-6
TIR
1 JUL 99

a. His record be corrected to reflect he was advanced to IT1 effective 16 July 1999. His time in rate eligibility date for advancement to E7 should be established as 1 July 1999.

b. Petty Office[redacted]hould be entitled to all compensation (pay and allowances) due as a result of this change.

[redacted]

By direction