



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 08451-98

10 August 1999

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

Subj: LT [REDACTED] USNR [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 30 Sep 98 w/attachments
(2) PERS-311 memo dtd 11 May 99
(3) PERS-61 memo dtd 14 Jun 99
(4) 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 September 1996 to 28 February 1997, a copy of which is at Tab A.

2. The Board, consisting of Messrs. McCulloch and Molzahn and Ms. Davies, reviewed Petitioner's allegations of error and injustice on 5 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. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command office having cognizance over fitness report matters, has recommended forwarding this case to the Director, Equal Opportunity Division (PERS-61) for comments on Petitioner's allegation of reprisal during the reporting period. PERS-311 stated that should this allegation be found to have merit, they have no objection to removing the fitness report in question.

c. In correspondence attached as enclosure (3), PERS-61 has recommended that the subject fitness report be removed from Petitioner's record on the basis that it reflected bias and retaliation.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), 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 fitness report and related material:

Date of Report	Reporting Senior	Period of Report From	To
97Mar15	 USN	96Sep01	97Feb28

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.

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.


For W. DEAN PFEIFFER
Executive Director



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

1610
PERS-311
11 May 1999

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

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

Subj: I [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 September 1996 to 28 February 1997.

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 was received and is in the process of being placed in the member's digitized record. The member signed the report acknowledging the contents of the report and his right to submit a statement. The member's statement and first endorsement are properly reflected in the member's headquarters record. The member provided another fitness report for the same period. However it was not suitable for filing. It was not submitted in accordance with reference (a), Annex P, paragraph P-4.b. It is not signed by the reporting senior nor the member and was not submitted with the required cover letter.

b. Counseling on performance is mandatory in accordance with reference (a), Annex C. Whether or not [REDACTED] given written counseling or a Letter of Instruction (LOI), does not invalidate the fitness report. The reporting senior did note the member received numerous counseling, both written and oral.

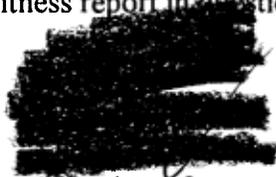
c. The member alleges the fitness report in question was issued because the reporting senior was bias toward him, lack of objectivity, and loss of impartiality

d. The contents of the report, marks, comments, and promotion recommendation represents the judgment and appraisal responsibility of the reporting senior for a specific period of time. The contents of the report are at the discretion of the reporting senior and are not routinely open to challenge. The reporting senior clearly states in his first endorsement to the statement to the record for his reason for submitting the report as he did.

e. Further review of the member's record revealed the fitness report for the period 1 March 1997 to 2 October 1997 missing from his record. If the member will send a copy of the report we will file it in the member's digitized record.

f. Although the member alleges reprisal and provides supportive documentation with his petition, he does not prove the report in question to be unjust or in error.

3. We recommend the member's petition be forwarded to Director, Equal Opportunity Division (NPC 61) for comments on the member's allegation of reprisal during the reporting period 1 September 1996 to 28 February 1997. Should the member's allegation be found to have merit, we have no objection to remove the fitness report in question.



Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

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

1610
PERS-61/044
14 Jun 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT [REDACTED] USNR [REDACTED]

Ref: (a) BCNR Performance Section ltr of 22 Mar 9
(b) PERS-00ZCB ltr of 20 May 99
(c) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 08451-98 w/Service record

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 September 1996 to 28 February 1997. References (a) and (b) requested an opinion by PERS-61 regarding possible discrimination.

2. In a personal statement in defense of his first Field Naval Aviator Evaluation Board (FNAEB), with Lieutenant Commander Aley as the senior member, Lieutenant [REDACTED] describes in great detail a command climate that appeared to become hostile and biased toward him during the period of 1995 - 1997. Lieutenant [REDACTED] failed a FNAEB on 15 November 1996. He received an adverse fitness report ending 28 February 1997.

3. There were many incidents during the period leading up to this particular fitness report that evolved into a perceived hostile working environment. [REDACTED] Commander, Carrier Group FIVE, overturned the results of the original FNAEB of 15 November 1996 and directed an investigation into possible prejudice that may have been involved with that board. Commander [REDACTED] was the senior member of the investigating board.

4. The findings of the investigation headed by Commander [REDACTED] and dated 19 February 1997, opined bias and retaliation by the Commanding Officer and chain of command against Lieutenant [REDACTED] Commander, Naval Air Force, U.S. Pacific Fleet, concurred with the findings on 23 May 1997.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT [REDACTED], USNE [REDACTED]

5. It is my opinion that bias and retaliation was reflected in the fitness report of 1 September 1996 - 28 February 1997 per reference (c). I recommend that the subject fitness report be removed from Lieutenant [REDACTED] record.

[REDACTED]

Director, Professional
Relationships Division