



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

HD:hd
Docket No: 01300-98
27 August 1999

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

Subj: LT [REDACTED], JAGC, USN, [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 5 Feb 98 w/attachments
(2) Pers-32 memo dtd 8 Apr 98
(3) Subject's ltr dtd 8 May 98 w/enclosures
(4) Two NPC-311 memos, dtd 20 Nov 98 and 27 Apr
(6) Subject's naval record99
(5) Subject's ltr dtd 15 Jun 99 w/enclosures

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 original concurrent fitness report for 1 February to 9 May 1997, a copy of which is at Tab A, and filing in its place a supplemental concurrent report for the same period dated 8 December 1997, a copy of which is the last attachment to Petitioner's application at enclosure (1). After Petitioner applied, she failed of selection before the Fiscal Year 00 Judge Advocate General Corps Lieutenant Commander Selection Board. The Board presumes she wants the failure of selection removed, since she felt she had to correspond with the selection board to explain the contested fitness report, which indicates she considers the report harmful to her competitiveness for promotion.

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. Enclosure (1) was filed in a timely manner.

c. In the contested original concurrent report, submitted on the occasion of Petitioner's detachment, the marks assigned consisted of one "5.0" (best, in block 33 (professional expertise)); three "4.0" (second best, in blocks 34 (equal opportunity), 36 (teamwork) and 37 (mission accomplishment and initiative)); two "3.0" (third best, in blocks 35 (military bearing and character) and 38 (leadership)); and one "not observed" (block 39 (tactical performance)). Block 40 (career recommendations) was marked "N/A." In promotion recommendation, she was marked alone as "Must Promote" (second best). The narrative was entirely favorable. This report showed the concurrent reporting senior as the chief of staff, a captain. It was duly countersigned by Petitioner's regular reporting senior.

d. The supplemental concurrent report raised the mark in block 37 from "4.0" to "5.0" and block 38 from "3.0" to "4.0"; removed the "N/A" entry from block 40 and replaced it with "SJA" (staff judge advocate) and "PG [postgraduate] School"; and raised the promotion recommendation from "Must Promote" to "Early Promote" (best). The narrative was unchanged. This report showed the concurrent reporting senior as the commander, a rear admiral, rather than the chief of staff. Like the original report, it was countersigned by Petitioner's regular reporting senior. Petitioner provides an undated letter to her from the rear admiral, stating he had reviewed her request for redress concerning her departure fitness report; that he had directed the chief of staff to modify the report he had submitted; and that a replacement report was enclosed. She also provides a letter dated 6 November 1997 from the chief of staff to the Chief of Naval Personnel, forwarding a supplemental fitness report for the period in question with himself as the reporting senior, and stating the reason for submitting the report was "to annotate administrative changes to the original report."

e. In correspondence attached as enclosure (2), Pers-322, the Bureau of Naval Personnel (BUPERS) office having cognizance over officer fitness reports, recommended retention of the original report, commenting that the supplemental report had not been received; that BUPERS Instruction 1610.10 requires the signature of the regular reporting senior before a concurrent report may be filed; and that the copy of the supplemental report Petitioner provided is not signed by the regular reporting senior, so it cannot be accepted for processing and filing in her record.

f. Petitioner's letter at enclosure (3) reflected her disagreement with enclosure (2), stating that she did, in fact, send the original of her supplemental fitness report to Pers-322; she enclosed a copy of the U. S. Postal Service Express Mail receipt. She also enclosed another copy of the supplemental report, which was signed by the regular reporting senior.

g. At enclosure (4) are two advisory opinions from PERS-311, the Navy Personnel Command office having cognizance over officer fitness reports, submitted in light of Petitioner's letter at enclosure (3). The first recommended approval of her petition, without acknowledging that the original and supplemental reports showed different officers as Petitioner's concurrent reporting senior. The second recommended disapproval, stating that the copy of the supplemental report Petitioner provided was not signed by the correct reporting senior, so it could not be accepted for file.

h. Petitioner's letter at enclosure (5) disputed the second advisory opinion included in enclosure (4). She commented that the original report in question had been downgraded from the one she had received on 31 January 1997; and that the reason for this was neither her conduct nor her performance, but the result of "personal animosity on the part of [her] supervisor" during the last two months of her tour. She asserted that the rear admiral was her reporting senior, and that he was out of the area when she detached from his command, so he was unavailable for her to speak with him about the fitness report. She stated that she submitted a request for redress to the rear admiral, in accordance with Article 1150, U. S. Navy Regulations, explaining what had happened; that the rear admiral found her complaint to be legitimate; and that he directed that the fitness report be upgraded to be consistent with previous ones. Concerning the assertion, in the second opinion at enclosure (4), that the supplemental report was not signed by the correct reporting senior, she stated that the original report had been signed in the absence of the rear admiral by his chief of staff; and that after the rear admiral had directed that a supplemental report be done, he signed it himself as her reporting senior, which he was. She further noted that BUPERS Instruction 1610.10, enclosure (2), Annex B, paragraph B-6.g specifically provides that "Commanding Officers may not...replace a report signed by a delegated reporting senior, except [emphasis added] to afford redress under Article 1150, U. S. Navy Regulation, 1990, or Article 138, UCMJ [Uniform Code of Military Justice.]" Petitioner concluded by stating that when she submitted her request for redress and the rear admiral determined it was justified, "...he did what he could to rectify the situation - he directed that a new fitness report be completed and he signed it himself, which [BUPERS Instruction 1610.10] permits."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting full relief.

Notwithstanding the contents of enclosure (2) and the second advisory opinion at enclosure (4), they find that Petitioner's fitness report record should be corrected as she requests. In this regard, whether or not the chief of staff had properly acted as Petitioner's concurrent reporting senior when he submitted the contested original report, they find that the rear admiral was authorized to sign the supplemental fitness report as a remedy under Article 1150, U. S. Navy Regulations. Further, they are persuaded that the supplemental report is a more fair and accurate appraisal of Petitioner's performance than the original.

The Board is convinced that the requested fitness report relief would have appreciably enhanced Petitioner's chances for promotion. Accordingly, they recommend removing her failure of selection.

In view of the above the Board recommends 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 From	of Report To
97May09	XXXXXXXXXXXX USN	97Feb01	97May09

b. That the supplemental fitness report dated 8 December 1997 for 1 February to 9 May 1997, to be forwarded by this Board, be filed in place of the original report for the same period to be removed pursuant to recommendation a above.

c. That Petitioner's record be corrected so that she be considered by the earliest possible selection board convened to consider officers of her category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

d. 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.

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. 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
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved:



OCT 14 1999

CHARLES L. TOMPKINS
Deputy Assistant Secretary
of the Navy for Personnel Programs

FITNESS REPORT & COUNSELING RECORD (E7 - 06)

RCS BUPERS 1610-1

1. Name (Last, First MI Suffix)		2. Grade/Rate		3. g		4. SSN	
5. ACT <input checked="" type="checkbox"/>	TAR <input type="checkbox"/>	INACT <input type="checkbox"/>	AT/ADSW/265 <input type="checkbox"/>	6. UIC	7. Ship/Station	8. Promotion Status	9. Date Reported
Occasion for Report				Period of Report			
10. Periodic <input type="checkbox"/>	11. Detachment of Individual <input checked="" type="checkbox"/>	12. Detachment of Reporting Senior <input type="checkbox"/>	13. Special <input type="checkbox"/>	14. From: 97FEB01		15. To: 97MAY09	
16. Not Observed Report <input type="checkbox"/>	17. Type of Report: Regular <input type="checkbox"/>			18. Concurrent <input checked="" type="checkbox"/>	19. Ops Cdr <input type="checkbox"/>	20. Physical Readiness P/WS	21. Billet Subcategory (if any) NA
22. Reporting Senior (Last, FI MI)		23. Grade	24. Desig	25. Title	26. UIC	27. SSN	
		RADM	1310	COMMANDER			

28. Command employment and command achievements.
 Command and control of assigned shore activities and fleet units. Aviation logistics support of U.S. Naval Forces and activities in the Mediterranean and U.S. Navy shore-based units within NAVEUR.

29. Primary/Collateral/Watchstanding duties. (Enter primary duty abbreviation in box.)
ASST. SJA Assistant Staff Judge Advocate to GCM authority-3.
 COLL: Command Inspection Team-3. Watch: Staff Duty Officer-3

For Mid-term Counseling Use. (When completing FITREP, enter 30 and 31 from counseling record, sign 32.	30. Date Counseled	31. Counselor	32. Signature of Individual Counseled
	97APR15		

PERFORMANCE TRAITS: 1.0 - Below standards/not progressing or UNSAT in any one standard; 2.0 - Does not yet meet all 3.0 standards; 3.0 - Meets all 3.0 standards; 4.0 - Exceeds most 3.0 standards; 5.0 - Meets overall criteria and most of the specific standards for 5.0. Standards are not all inclusive.

PERFORMANCE TRAITS	1.0* Below Standards	2.0 Pro- gressing	3.0 Meets Standards	4.0 Above Standards	5.0* Greatly Exceeds Standards
33. PROFESSIONAL EXPERTISE: Professional knowledge, proficiency, and qualifications. NOB <input type="checkbox"/>	- Lacks basic professional knowledge to perform effectively. - Cannot apply basic skills. - Fails to develop professionally or achieve timely qualifications.	-	- Has thorough professional knowledge. - Competently performs both routine and new tasks. - Steadily improves skills, achieves timely qualifications.	-	- Recognized expert, sought after to solve difficult problems. - Exceptionally skilled, develops and executes innovative ideas. - Achieves early/highly advanced qualifications.
34. EQUAL OPPORTUNITY: Fairness, respect for human worth. NOB <input type="checkbox"/>	- Displays personal bias or engages in harassment. - Tolerates bias, unfairness or harassment in subordinates. - Lacks respect for EO objectives. - Interferes with order and discipline by disregarding rights of others.	-	- Always treats others with fairness and respect. - Does not condone bias or harassment in or outside of workplace. - Supports Navy EO objectives. - Contributes to unit cohesiveness and morale.	-	- Admired for fairness and human respect. - Ensures a climate of fairness and respect for human worth. - Pro-active EO leader, achieves concrete EO objectives. - Leader and model contributor to unit cohesiveness and morale.
35. MILITARY BEARING/ CHARACTER: Appearance, conduct, physical fitness, adherence to Navy Core Values. NOB <input type="checkbox"/>	- Consistently unsat appearance. - Unsatisfactory demeanor/conduct. - Unable to meet one or more physical readiness standards. - Fails to live up to one or more Navy Core Values: HONOR, COURAGE, COMMITMENT.	-	- Excellent personal appearance. - Excellent demeanor or conduct. - Complies with physical readiness program, within all standards. - Always lives up to Navy Core Values: HONOR, COURAGE, COMMITMENT.	-	- Exemplary personal appearance. - Exemplary representative of Navy. - Excellent or outstanding PRT. A leader in physical readiness. - Exemplifies Navy Core Values: HONOR, COURAGE, COMMITMENT.
36. TEAMWORK: Contributions to team building and team results. NOB <input type="checkbox"/>	- Creates conflict, unwilling to work with others, puts self above team. - Fails to understand team goals or teamwork techniques. - Does not take direction well.	-	- Reinforces others' efforts, meets personal commitments to team. - Understands team goals, employs good teamwork techniques. - Accepts and offers team direction.	-	- Team builder, inspires cooperation and progress. - Talented mentor, focuses goals and techniques for team. - The best at accepting and offering team direction.
37. MISSION ACCOMPLISHMENT AND INITIATIVE: Taking initiative, planning, prioritizing, achieving mission. NOB <input type="checkbox"/>	- Lacks initiative - Unable to plan or prioritize. - Does not maintain readiness. - Fails to get the job done.	-	- Takes initiative to meet goals. - Plans/prioritizes effectively. - Maintains high state of readiness. - Always gets the job done.	-	- Develops innovative ways to accomplish mission. - Plans/prioritizes with exceptional skill and foresight. - Maintains superior readiness, even with limited resources. - Gets jobs done earlier and far better than expected.

Page (2)

1. Name (Last, First MI Suffix) H [REDACTED]		2. Grade/Rate LT		3. I [REDACTED]		4. SSN [REDACTED]	
PERFORMANCE TRAITS	1.0* Below Standards	2.0 Pro- gressing	3.0 Meets Standards	4.0 Above Standards	5.0* Greatly Exceeds Standards		
38. LEADERSHIP: Organizing, motivating and developing others to accomplish goals. NOB <input type="checkbox"/>	- Fails to motivate, train or develop subordinates. - Fails to organize, creates problems for subordinates. - Does not set or achieve goals relevant to command mission. - Lacks ability to cope with or tolerate stress. - Inadequate communicator. - Tolerates hazards or unsafe practices. - Does not attend to welfare of subordinates.	-	- Effectively motivates, trains and develops subordinates. - Organizes successfully, solves problems as they occur. - Sets/achieves useful, realistic goals which support command mission. - Performs well in stressful situations. - Clear, timely communicator. - Ensures safety of personnel and equipment. - Routinely considers subordinates' personal and professional welfare.	-	- Inspiring motivator and trainer, consistently builds winners. - Superb organizer, great foresight, gets ahead of problems. - Leadership achievements dramatically further command mission. - Perseveres through the toughest challenges and inspires others. - Exceptional communicator. - Makes subordinates safety-conscious, maintains top safety record. - Constantly improves the personal and professional lives of others.		
39. TACTICAL PERFORMANCE: (Warfare qualified officers only) Basic and tactical employment of weapons systems. NOB <input checked="" type="checkbox"/>	- Has difficulty attaining qualification expected for rank or experience. - Has difficulty in ship(s), aircraft or weapons systems employment. Below others in knowledge and employment. - Warfare skills in specialty are below standards compared to others of same rank and experience.	-	- Attains qualifications as required and expected. - Capably employs ship(s), aircraft, or weapons systems. Equal to others in warfare knowledge and employment. - Warfare skills in specialty equal to others of same rank and experience.	-	- Fully qualified at appropriate level for rank and experience. - Innovatively employs ship(s), aircraft, or weapons systems. Well above others in warfare knowledge and employment. - Warfare skills in specialty exceed others of same rank and experience.		

40. I recommend screening this individual for next career milestone(s) as follows: (maximum of two) Recommendations may be for competitive schools or duty assignments such as: LCPO, DEPT CPO, SEA, CMC, CWO, LDO, Dept Head, XO, OIC, CO, Major Command, War College, PG School.

SJA PG SCHOOL

41. COMMENTS ON PERFORMANCE: * All 5.0 and 1.0 marks must be specifically substantiated in comments. No numerical ranking permitted. Comments must be verifiable. Bold, underlined, italic, or other highlighted type is prohibited. Font must be 10 or 12 pitch (10 to 12 point) only. Use upper and lower case.

A highly capable and accomplished officer and judge advocate. High potential for duties of increased responsibility and accountability.

- Well versed in NATO status of forces issues from both a legal and practical application standpoint.

*33 [REDACTED] is the command expert on FOIA, the Privacy Act, Gift Acceptance, and Family Advocacy issues. Commanders throughout the AOR frequently seek [REDACTED] advice on these often complex and delicate issues. She also expertly investigated and drafted the command's response to 2 Article 138, UCMJ complaints; advised the Naval Hospital and Family Advocacy on a novel issue of first impression in an alleged child abuse situation; and prepared a detailed litigation report on a unique Italian labor lawsuit.

Promotion Recommendation	NOB	Significant Problems	Progressing	Promotable	Must Promote	Early Promote	44. Reporting Senior Address
42. INDIVIDUAL						X	[REDACTED]
43. SUMMARY	<input checked="" type="checkbox"/>	0	0	0	0	1	[REDACTED]

45. Signature of Reporting Senior
[REDACTED]
Date: 8 DEC 97

46. Signature of individual evaluated. "I have seen this report, been apprised of my performance, and understand my right to make a statement."
I intend to submit a statement I do not intend to submit a statement
[REDACTED]
Date: 21 JAN 98

47. Typed name, grade, command, UIC, and signature of Reporting Senior on Concurrent Report
[REDACTED]
[REDACTED] USN
[REDACTED]



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

IN REPLY REFER TO
1610
Pers-32
8 APR 98

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

Via: BUPERS/BCNR Coordinator (Pers-00XCB)

Subj: LT [REDACTED] IES, USN [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of her performance report for the period of 1 February 1997 to 9 May 1997, leaving the supplemental report for the same period.

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

a. Review of the member's headquarters record revealed the report in question to be on file. The report is signed by the member in block 46 acknowledging the contents of the report and her rights in accordance with regulations. The member indicated she did not desire to make a statement. However, in accordance with reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired.

b. The member indicates the supplemental report has been forwarded to Pers-322. Because the supplemental report has not been received by Pers-322, our comments are based on a copy included with the member's petition. The supplemental report is accompanied by the required cover letter and changes the member's promotion recommendation to early promote and changes block 40, career recommendations. The reporting senior states the supplemental report is being submitted to correct administrative errors.

c. The original and supplemental report are concurrent, detachment of individual reports. Reference (a), Annex E, paragraph E-6, requires the signature of the regular reporting senior before a concurrent report can be filed. The copy of the supplemental report is not signed by the regular reporting senior and cannot be accepted for processing and filing in the member's headquarters record.

Subj: [REDACTED], USN, [REDACTED]

3. In view of the above, we recommend retention of the original report.

[REDACTED]

Director, Military personnel
Evaluation & Correspondence
Division



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

1610
NPC-311
27 April 1999

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

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

Subj: [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 her fitness report for the period 1 February 1997 to 9 May 1997 and replace it with a supplemental report for the same period.

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. The supplemental fitness report has not been received, however the member included a copy with her petition. The report is signed by the member acknowledging the contents of the report and her rights to submit a statement. The member indicated she did not desire to make a statement. In accordance with reference (a), Annex S, the member has two years from the ending date to submit a statement.

b. The supplemental report changes the member's promotion recommendation from "Must Promote to Early Promote, upgrades two performance trait marks, and Block-40 career recommendations. The supplemental report cover letter was submitted in accordance with reference (a).

c. The original report is a detachment of individual, concurrent report signed by [REDACTED] reporting senior and countersigned by [REDACTED] the member's regular reporting senior. The supplemental report is signed [REDACTED] as the reporting senior and countersigned by [REDACTED] the member's regular reporting senior. The copy of the supplemental report is not signed by the correct reporting senior, therefore the supplemental report cannot be accepted for file.

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

3. We recommend the member's record remain unchanged.



Head, Performance
Evaluation Branch