



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No: 6897-16
SEP 14 2017

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USN, XXX-XX [REDACTED]

Ref: (a) 10 U.S.C. §1552

Encl: (1) DD Form 149
(2) CNPC memo 1610 PERS-32 of 23 Mar 17
(3) CNPC ltr 1920 SER 834/015 of 20 Apr 17
(4) FITREP for reporting period 1Nov14 to 30Sep15

1. Pursuant to the provisions of reference (a), Petitioner, a commissioned officer in the Navy, filed enclosure (1) with this Board requesting that his record be corrected by (1) removing all adverse personnel action taken against him as a result of his detachment for cause (DFC); (2) reinstating his temporary appointment as a lieutenant commander (LCDR); (3) reversing the removal of his name from the FY15 Active-Duty Navy Lieutenant Commander Line (Unrestricted Line) Promotion List, and (4) granting a special selection board (SSB) for permanent promotion to LCDR. Enclosures (1) through (4) apply.

2. The Board, consisting of Mr. Chapman, Mr. Cothrel and Ms. Johnson, reviewed Petitioner's allegations of error and injustice on 30 June 2017 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 his application, together with any material submitted in support thereof, relevant portions of his naval record, and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions (AO) provided by the Navy Personnel Command (PERS-32) and (PERS-834), as well as Petitioner's rebuttal statement dated 16 May 2017.

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. Petitioner was selected by the FY13 Second Quarter Spot Promotion Selection Board and promoted to the temporary grade of LCDR on 9 August 2013. The spot promotion was effective while serving in his current billet, or until promoted to the permanent grade of LCDR.

d. On 7 April 2014, the FY15 Active-Duty Navy Lieutenant Commander Line (Unrestricted Line) Promotion Selection Board convened. Petitioner was selected with a 1 March 2015 projected date of rank.

e. On 19 December 2014, his Commanding Officer (CO) issued Petitioner a Letter of Instruction (LOI) stating, in part, that he failed to establish and maintain a culture of good engineering practices. Petitioner contended that he signed and dated the LOI on 20 December 2014, but did not receive a copy of it. On 26 January 2015, his CO requested that he be detached for cause (DFC) due to substandard performance of duty over an extended period of time as evidenced by below class and fleet average scores during assessments, surveys, and inspections and his failure to resolve deficiencies addressed in the LOI. Additionally, his CO recommended that his early command orders be cancelled and his permanent promotion to LCDR be reviewed. On 11 February 2015, Petitioner submitted a statement in support of his promotion, stating the mitigating circumstances that precipitated his DFC, namely a compressed training schedule, severe manning concerns, equipment casualties and an 11-month yard period. He stated that he is fully qualified in four ship classes with four officer of the deck letters, three engineering officer of the watch letters and two tactical action officer letters, that he is command qualified and was selected for early command. He also declared his dedication to service in the military, to include over four years as an enlisted Marine Reservist.

f. On 20 February 2015, his CO, after reflecting on events and reviewing his personal statement, reversed her previous recommendation and recommended him for permanent promotion, stating that promoting him supports Navy Ethos and is aligned with the requirement of exemplary conduct. She opined that she did not recommend punitive measures and that his actions were not malicious. She stated that his failures do not preclude his service in less demanding LCDR billets.

g. On 25 February 2015, the Chief of Naval Personnel Command (CNPC) notified Petitioner that his permanent promotion to LCDR was delayed.

h. On 10 July 2015, the CNPC approved Petitioner's DFC due to substandard performance of duty over an extended period of time. Consequently, he was issued an adverse Detachment of Individual/Regular FITREP for the reporting period 1 November 2014 to 30 September 2015. He was not required to show cause for retention on active duty.

i. On 23 May 2016, his Executive Officer (XO) submitted a letter advocating Petitioner's promotion to LCDR. In his letter, he identified several factors that hindered Petitioner's ability to comply with the provisions of the LOI, and stated that he did not believe Petitioner's performance met the criteria for substandard performance of duty over an extended period of time.

j. On 26 April 2017, the Chief of Naval Operations (CNO) provided comments and a recommendation to Petitioner regarding his promotion. Despite his CO and XO advocating for his permanent promotion, the CNO recommended removal of Petitioner's name from the FY15

Promotion List, stating that he did not have the necessary trust and confidence to recommend permanent promotion the LCDR at that time.

k. On 26 April 2017, Petitioner's name was removed from the FY15 Promotion List, and he was notified that removal from the Promotion List constitutes a failure of selection (FOS). On 16 May 2017, he was notified by the CNPC that he would be reverted back to the grade of lieutenant effective 8 May 2017 due to his name being removed from the LCDR Promotion List, and as a result of his DFC, he no longer met the criteria to retain the spot promotion.

l. The PERS-32 AO, enclosure (2), commented specifically about the removal of Petitioner's adverse FITREP that he received as a result of his DFC (enclosure (4)). The AO recommended that the FITREP be removed from his OMPF and replaced with a memorandum of continuity because the FITREP was not a valid report. Specifically, the adversity of the report required his signature and it was not signed by the Petitioner.

m. The PERS-834 AO, enclosure (3), commented specifically regarding Petitioner's request to remove all adverse personnel actions pertaining to his DFC. The AO stated that the DFC meets the criteria as listed in the Naval Military Personnel Manual (MILPERSMAN) and recommended against removing the DFC from Petitioner's OMPF.

n. Petitioner argued that the DFC process was used inappropriately, the LOI was an inadequate justification for initiating the DFC process, and that he had inadequate time to correct alleged substandard performance. In his rebuttal statement to the AOs, he argued that neither AO addressed his contention that he was not given an adequate period to correct his deficiencies, that he was endorsed by his XO during the period at issue, and that the adverse action is inconsistent with Navy regulations (i.e., he was at his planned rotation date at the time the adverse action was initiated).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In this regard, the Board concurred with the PERS-32 AO that the adverse FITREP ending 30 September 2015 is invalid and should be removed from his OMPF and replaced with a memorandum of continuity.

The Board concurred with the PERS-834 AO and was not willing to remove any other derogatory material from Petitioner's OMPF that he received as a result of his DFC. Additionally, the Board was not willing to reinstate his temporary appointment as a LCDR or reverse the removal of his name from the FY15 LCDR Promotion List. In this regard, although unfortunate, the Board did not find that his DFC was improper. The DFC thus justified the removal of his spot promotion and removal from the FY15 LCDR Promotion List. Further, The Board concluded that he did not sufficiently substantiate the existence of an error or injustice, and removing adverse material from his OMPF would be unfair to his peers, against whom he will compete for promotions and assignments.

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With regard to his request for an SSB, the Board noted that in accordance with statutory and regulatory authority, he must first exhaust all available administrative remedies. Specifically, he must first request for approval of an SSB through the NPC (PERS-80) before the Board can consider his petition.

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

RECOMMENDATION:

Petitioner's naval record be corrected by removing the adverse Detachment of Individual /Regular FITREP for reporting period 1 November 2014 to 30 September 2015, and replace it with a memorandum of continuity.

No further relief be granted.

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.

[REDACTED]
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 Regulation, 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.

[REDACTED]
Executive Director