



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

██████████
Docket No. 505-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████ USN,
XXX-XX ██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) MILPERSMAN 1611-010
(c) SECNAVINST 1420.1B

Encl: (1) DD Form 149 w/enclosures
(2) Cmdr, ██████████, ltr of 16 Aug 16
(3) Petitioner's FIRST ENDORSEMENT of 26 Aug 16
(4) CNPC ltr 1920 Ser 834/580 of 11 Aug 17
(5) CNO Action Memo of 16 Apr 18

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by reinstating his Fiscal Year (FY) 2017 Active Duty Navy Commander Line (Unrestricted Line) (URL) selection.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 28 January 2021. The names and votes of the members of the panel will be furnished upon request. Petitioner's allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of Petitioner's application, together with all material submitted in support thereof, relevant portions of his naval record, and the enclosures, as well as applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 14 September 2014, Petitioner, while driving his privately owned vehicle, veered out of his lane and struck a pedestrian and an embankment, and then left the scene. Petitioner purportedly was not aware that he hit a pedestrian, but reported himself after reading a news article about a hit and run in the same area, and believed it may have been him.

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c. On 16 June 2016, Petitioner pleaded guilty to one count of "hit and run with injury" and one count of "concealing an event that affected an insurance claim." The sentence imposed was three years' probation to expire on 15 June 2019, and 120 days of work furlough.

d. On 16 August 2016, Petitioner's commanding officer (CO) submitted enclosure (2), a Final Civil Action Report (FCAR) to the Commander, Navy Personnel Command (PERS-834), recommending that Petitioner be required to show cause for retention, and that his name be removed from the FY 2017 Active Duty Navy Commander Line (URL) Promotion List. Petitioner was notified and acknowledged that adverse material will be added to his official military personnel file (OMPF). On 26 August 2016, he submitted matters in response to the FCAR. Enclosure (3).

e. On 31 July 2017, Petitioner appeared before a BOI. The BOI determined by a vote of 3 to 0 that the preponderance of the evidence supported his misconduct and substandard performance, but recommended that he be retained in the naval service.

f. On 11 August 2017, PERS-834 notified Petitioner that he was retained in the Navy, and that adverse material would be filed in his OMPF. He was afforded an opportunity to submit a written statement in response. Enclosure (4).

g. The Chief of Naval Operation (CNO) considered matters pertaining Petitioner's misconduct and substandard performance, and all matters submitted thereto. On 16 April 2018, the CNO recommended that Petitioner's name be removed from the FY 2017 Active Duty Navy Commander Line (URL) Promotion List, noting that Petitioner pleaded guilty to one felony and one misdemeanor charge stemming from a motor vehicle accident in which he struck a pedestrian. The CNO noted that this information was not available to the promotion selection board. Accordingly, the CNO did not have the necessary trust and confidence to recommend Petitioner for promotion to commander. Enclosure (5).

h. On 8 May 2018, the Secretary of the Navy (SECNAV) removed Petitioner's name from the FY 2017 Active Duty Navy Commander Line (URL) Promotion List. Enclosure (5).

i. Petitioner contends that the decision to remove his name from the FY 2017 Active Duty Navy Commander Line (URL) Promotion List was based solely on the recommendation from the Commander, Naval Surface Forces Pacific Fleet. Petitioner argues that, based on the Commander's lack of interaction with him and the Commander's misunderstanding of the facts, as well as his inconsistent judgment with Navy ethos, Petitioner's name should be reinstated on the FY 2017 Promotion List.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request does not warrant relief. In reaching its conclusion, the Board determined that Petitioner's contention that removal of his name from the FY 2017 Promotion List was based

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solely on the recommendation from the Commander, Naval Surface Forces Pacific Fleet, who purportedly lacked interaction with the Petitioner, and misunderstood the facts, and who had inconsistent judgment, lacks merit.

The Board noted that Petitioner was afforded an opportunity to submit comments in response to his Commander's 16 August 2016 FCAR regarding Petitioner's 14 September 2014 "hit and run with injury" incident. Petitioner was again afforded an opportunity to address any purported misunderstanding of the facts at his 31 July 2017 BOI, and the BOI unanimously determined that a preponderance of the evidence supported his misconduct and substandard performance. The Board also noted that this information was not available for consideration when he was selected for promotion by the FY 2017 Active Duty Navy Commander Line (URL) Promotion Selection Board.

The Board determined that the decision to remove Petitioner from the FY 2017 Promotion List was made knowingly, and with due consideration to the evidence and findings of both the civilian court case, Petitioner's BOI, and of the matters submitted by the Petitioner supporting his promotion. Ultimately, pursuant to reference (c), the SECNAV is responsible for ensuring that officers to be appointed are mentally, physically, morally, and professionally qualified for promotion. The SECNAV determined that, due to Petitioner's misconduct and substandard performance, he failed to maintain the standard of behavior expected of a Navy officer, and that he was no longer qualified for promotion. The Board lacks jurisdiction to disturb that determination. Accordingly, under the totality of the circumstances, the Board concluded that Petitioner failed to provide substantial evidence demonstrating the existence of a probable material error or injustice warranting the requested relief.

RECOMMENDATION

In view of the above, the Board recommends no 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.
5. The foregoing action of the Board is submitted for your review and action.

2/22/2021

[REDACTED]

Executive Director

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XXX-XX-[REDACTED]

SECRETARY OF THE NAVY DECISION:

Reviewed and Approved Petitioner Request (Grant Relief)

Reviewed and Approved Board Recommendation (Deny Relief)

JUN 29 2021

[REDACTED]

Acting