



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

█  
Docket No. 1034-20  
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) SECNAVINST 1420.1B

Encl: (1) DD Form 149 w/enclosures  
(2) DTRA J10NL ltr 1611 of 31 Mar 17  
(3) Dir, J10 DTRA ltr of 19 Apr 17  
(4) Petitioner's statement of 9 May 17  
(5) BOI findings of 31 Oct 17  
(6) CNPC ltr 1920 Ser 834/580 of 2 Nov 17  
(7) CNO Action Memo of 13 Jun 18  
(8) Petitioner's statement of 22 Nov 17

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 Navy Active Duty Commander Line (URL) selection, and authorization to assume the rank of commander on the originally projected effective date.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 19 November 2020. 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 7 December 2016, Petitioner was cited for driving the wrong way on a divided highway and driving while impaired by alcohol. Petitioner had his on-base driving privileges

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suspended by the command for failure to submit to the official breathalyzer test. Consequently, Petitioner's promotion to commander was delayed pending review of adverse matters.

c. On 9 February 2017, the Prosecuting Attorney dismissed the charge of driving the wrong way. Charges were amended to a charge of careless and imprudent driving. Petitioner accepted the charge and paid a court-required fine.

d. On 31 March 2017, Petitioner's commanding officer (CO) submitted enclosure (2), a Final Civil Action Report (FCAR) to the Commander, Navy Personnel Command (PERS-834), and opined that Petitioner's actions did not warrant removal from the FY 2017 Promotion List. Petitioner's CO did not recommend that he be required to Show Cause before a Board of Inquiry (BOI), or a Detachment for Cause (DFC). The Director, Nuclear Enterprise Support (J10 DTRA), however, determined that Petitioner's actions did warrant his removal from the FY 2017 Promotion List, enclosure (3). On 31 March 2017, Petitioner was notified and acknowledged that adverse material will be added to his record. He was afforded an opportunity to submit statement in response, and he chose to submit a written statement in response to the J10 DTRA recommendation that his selection be removed, enclosure (4).

e. On 31 October 2017, Petitioner appeared before a BOI. The BOI determined by a vote of 3 to 0 that the preponderance of the evidence did not support misconduct or substandard performance warranting separation and that none of the reasons are supported by sufficient evidence presented to warrant separation for cause, enclosure (5).

f. On 2 November 2017, PERS-834 notified Petitioner that he was retained in the Navy, and that adverse material would be filed in his official military personnel file (OMPF). He was afforded an opportunity to submit a written statement in response, enclosure (6).

g. The Chief of Naval Operation (CNO) considered matters pertaining to Petitioner's adverse information, to include the facts and circumstances regarding his misconduct, his statement requesting promotion to commander, and his chain of command's favorable endorsement for his promotion. On 13 June 2018, the CNO recommended that Petitioner's name be removed from the FY 2017 Active Duty Commander Line (URL) Promotion List, noting that he pleaded guilty to a reduced charge in civilian court to operating a motor vehicle in a careless and imprudent manner, and Petitioner's blood alcohol content (BAC) of 0.158 from his preliminary breath test, and that an eyewitness observed Petitioner driving down the wrong side of the highway, which reflects dangerous and reckless behavior. Lastly, 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 (7).

h. On 18 July 2018, the Secretary of the Navy (SECNAV) removed Petitioner's name from the FY-17 Active Duty Commander Line (URL) Promotion List, enclosure (7).

i. Petitioner contends that the removal of his name from the FY 2017 Promotion List was made without due consideration to the evidence and findings of both the civil and military cases and the support and endorsements of his chain of command.

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In this regard, Petitioner asserts that his civil case was resolved in February 2017 with him paying the directed fine for a charge of careless and imprudent driving. Next, Petitioner asserts that a BOI concluded with unanimous findings of 'not guilty' of misconduct, driving while impaired due to alcohol; that he had not failed to conform to prescribed standards of military deportment; and that he was recommended for retention in the Naval Service. Petitioner also asserts that he received a strong endorsement for his promotion from his chain of command which cited the honesty and integrity he maintained throughout, his continued exemplary conduct and performance of duty expected of a senior commander, and why the command's recommendation supports the Navy Ethos. Petitioner argues that, despite both the civil case and military board being resolved with favorable findings and the strong endorsements of his command, his name was removed from the FY 2017 Promotion List, enclosures (1) and (8).

## 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 made without due consideration of the evidence and findings of both the civil and military cases, and without due consideration of the support and endorsements of his chain of command, lacks merit.

The Board noted that the CNO's 13 June 2018 Action Memorandum to the SECNAV clearly demonstrates that all applicable matters, to include the facts and circumstances regarding Petitioner's misconduct, his statement requesting promotion to commander, and his chain of command's favorable endorsement for his promotion. Moreover, the Board determined that this contention does not allege an error or injustice in Petitioner's OMPF, and that he appears just to disagree with the SECNAV's decision, which does not make it an error.

First, the Board noted that Petitioner's acceptance of amended charges of careless and imprudent driving, and payment of a court-required fine does not absolve him of his misconduct. Likewise, the Board noted that the scope of a BOI is not judicial, but to form findings and recommendations that provide a basis for separation for cause, or retirement in the current grade or a lesser grade, and to present matters favorable to their case on the issues of separation and characterization of service. The Board determined that the BOI did not determine that Petitioner was "not guilty" of misconduct, rather, his misconduct did not warrant separation from the Navy.

Lastly, the Board determined that the decision to remove Petitioner from the FY 2017 Promotion List was made deliberately, and with due consideration to the evidence and findings of both the civilian court case, Petitioner's BOI, and of the support and endorsements of his chain of command. Ultimately, pursuant to reference (b), 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, 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

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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.

1/18/2021

[REDACTED]

Executive Director

**SECRETARY OF THE NAVY DECISION:**

Reviewed and Approved Petitioner Request (Grant Relief)

Reviewed and Approved Board Recommendation (~~Deny Relief~~)

JUN 29 2021

[REDACTED]

Secretary of the Navy  
Acting