



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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ARLINGTON, VA 22204-2490

█
Docket No: 2968-20
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) 10 U.S.C. § 1552
(b) 10 U.S.C. § 632
(c) BUPERSINST 1610.10D
(d) MILPERSMAN 1611-020, Ch-18, Officer Detachment for Cause, 30 March 2007
(e) MILPERSMAN 1616-010, Detachment for Cause (DFC) of Enlisted Personnel

Encl: (1) DD Form 149 w/ attachments
(2) █ CO Memo 1616 Ser █, subj: Detachment for Cause Request ICO [Petitioner], 30 October 2017
(3) Petitioner's Memo, subj: Statement ICO the Detachment for Cause Request, 11 November 2017
(4) █ CO Memo 5000 Ser DDG 73/173, subj: Detachment for Cause Request ICO [Petitioner], 8 December 2017 (First Endorsement of Enclosure (3))
(5) █ CO Memo 1611 Ser N00/004, subj: Detachment for Cause Request ICO [Petitioner], 4 January 201[8] (Second Endorsement of Enclosure (3))
(6) █ CO Memo 1611 Ser N00/010, subj: Detachment for Cause ICO [Petitioner], 18 January 2018 (Third Endorsement of Enclosure (3))
(7) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20170204 – 20180131)
(8) BCNR Memo █ Docket No: 0423-19, subj: Review of Naval Record of [Petitioner], 26 February 2020
(9) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20180201 – 20180504)
(10) BUPERS Memo 1611 BUPERS-00B/292, subj: Detachment for Cause ICO [Petitioner], 14 May 2018
(11) Board of Inquiry Report in the case of [Petitioner]
(12) NPC CO Memo 1920 Ser 834/345, subj: Status in the U.S. Navy, 17 September 2018
(13) COMNAVPERSCOM Msg, subj: BUPERS Order (Official Separation Orders for [Petitioner], dtg 170059Z Sep 2019
(14) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20190201 – 20191031)
(15) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20191101 – 20200131)
(16) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20200201 –

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20200301)

- (17) [REDACTED], [REDACTED], [REDACTED], [REDACTED]
- (18) PERS-834 Memo 1920 Ser 834-005, subj: Request for Comments and Recommendations in the case of [Petitioner], 29 May 2020
- (19) NPC CO Memo 1401 PERS-80/0158, subj: FY-19 Navy Active-Duty Lieutenant Commander Line (AO4L) Special Selection Board, 9 November 2020
- (20) BCNR Memo [REDACTED] Docket No: 3225-21, subj: Review of Naval Record of [Petitioner], 27 May 2021
- (21) DD Form 2412, Defense Meritorious Service Medal Certificate, 13 January 2020
- (22) Petitioner's Memo, subj: Request for Significant Experience Subspecialty Code, 14 September 2020
- (23) PERS 450 E-mail, subj: RE: (award) 2101S Subspecialty Code ICO [Petitioner] 14 October 2020 @ 9:24AM
- (24) COMNAVPERSCOM Message, subj: BUPERS Order (Official Separation Orders for [Petitioner], dtg 100014Z December 2020
- (25) Petitioner's Memo, subj: Addendum One (1) to BCNR Docket No. 20200002968 (with enclosures), 1 July 2020
- (26) Petitioner's Memo, subj: Addendum Two (2) to BCNR Docket No. 20200002968 (with enclosures), 14 December 2020

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 reconsideration of the Board's previous finding in Docket No. 0423-19 of no error or injustice in his Detachment for Cause (DFC) from his duties onboard the [REDACTED] [REDACTED] for substandard performance of duty, and the removal of all documents in his naval record associated with the DFC and its resulting Board of Inquiry (BOI). Petitioner subsequently supplemented his request to include numerous additional corrections to his naval record after his failure of selection (FOS) by the Fiscal Year (FY) 2019 Navy Active-Duty Lieutenant Commander (LCDR) (Line) Special Selection Board (SSB) and the FY 2021 Navy Active-Duty LCDR (Line) Promotion Selection Board (PSB), to include the removal and/or amendment to several fitness reports (FITREP) which were either promulgated by the Reporting Senior (RS) who initiated his DFC request or included references or indications of his prior FOS;¹ the correction of his Performance Summary Report (PSR) pursuant to the changes requested for his FITREPs; the removal of his mandatory separation date and all documents that were inserted into his record as a result of his previous mandatory separation date;² the removal of his FOS by the FY 2019 Navy Active-Duty LCDR

¹ Specifically, Petitioner requested that his FITREPs covering the periods from 4 February 2017 to 31 January 2018 and 1 February 2018 to 4 May 2018, both of which were issued by the RS who initiated his DFC action, be removed and replaced with continuity memoranda; that his FITREP for the period 1 February 2019 to 31 October 2019 be modified by changing Block 21 from "APPROVED" to "N/A" and that a Letter Supplement dated 19 November 2020 be removed; that his FITREP for the period 1 November 2019 to 31 January 2020, and a Supplemental Report Letter dated 1 October 2020, be removed, so that only the Supplemental Report for the same reporting period remains; and that his FITREP for the period 1 February 2020 to 1 March 2020, which was issued pursuant to his previously removed mandatory separation be removed.

² Specifically, Petitioner requested the removal from his naval record of his letter dated 19 May 2021 requesting removal of his DD Form 214 (OMPF Document No. 2718020); a NAVPERS 1070/880 Awards Record (OMPF Document No. 2731079); a NAVPERS 1070/605, History of Assignments (OMPF Document No. 2723208); a

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(Line) SSB and the FY 2021 Navy Active Duty LCDR (Line) PSB;³ the reconvening of another FY 2019 Navy Active-Duty LCDR (Line) SSB; and his removal from “non-due course” status and insertion of a Field Code 03 letter from Navy Personnel Command (NPC) (PERS-4).

2. The Board reviewed Petitioner’s allegations of error or injustice on 12 August 2021 and, pursuant to its regulations, determined that the corrective actions indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner’s naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all of the facts of record pertaining to Petitioner’s allegations of error or 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. Petitioner was assigned as the Engineer Officer on the [REDACTED] on 28 March 2017. See enclosure (2).

c. On 18 September 2017, his commander issued Petitioner a Letter of Instruction (LOI) after the ship was assessed as not ready to light off by Engineering Assessment Pacific, reportedly due in part to Petitioner’s lack of preparation for the inspection. See enclosure (2).

d. By memorandum dated 30 October 2017, Petitioner’s commander requested that Petitioner be DFC from his duties onboard the [REDACTED] by reason of unsatisfactory performance of duty over an extended period of time. In making this request, Petitioner’s commander stated that Petitioner was “unable to perform the duties of Engineer Officer due to his inability to take responsibility for problems in his department and affect a positive leadership style.” He also stated that Petitioner “often makes poor decisions and tries to cover up for mistakes,” and that “[h]is poor leadership [had] a negative impact on the ship’s readiness and [was] a primary factor in [REDACTED] being assessed as not ready to light off in three Light-off assessments.” Petitioner’s commander also asserted that Petitioner failed to show substantial improvement following issuance of the LOI discussed above in several areas, including in his ability to prioritize work, treat members of his department with respect, and develop a vision for success at Light-Off Assessment to include communicating his vision and taking to his subordinates. Although his commander requested Petitioner’s DFC from his duties onboard the [REDACTED], he specifically recommended that Petitioner not be required to show cause for retention in the naval service. See enclosure (2).

e. By memorandum dated 11 November 2017, Petitioner responded to the DFC request. In this response, Petitioner maintained that he worked tirelessly upon his arrival onboard the [REDACTED] to turn around the Engineering Department which he inherited in a complete state of disarray. He complained that he was subjected to a “poor working climate,” and that his efforts

Member Data Summary (OMPF Document No. 2723213); and a NAVPERS 1070/881, Training Education and Qualification History (OMPF Document No. 2723215).

³ Petitioner’s FOS by the FY 2021 Navy Active-Duty LCDR (Line) PSB was previously removed by the Board in Docket No. 3225-21.

were impeded by “constraints with the schedule, material readiness, manpower, and ‘clock driven’ command culture.” See enclosure (3).

f. Upon receipt of Petitioner’s statement discussed in paragraph 3e above, his commander forwarded the DFC request and Petitioner’s statement through the chain of command to the Commander, NPC. In response to Petitioner’s allegations, his commander commented that Petitioner’s statement made it clear that he is unable to self-assess his own shortcomings or change his leadership style to improve his department. He also noted that the Engineer Department that Petitioner inherited and which he asserted to be substandard had just come off of a successful deployment and had recently earned or contributed to several awards for excellence prior to Petitioner’s arrival. Petitioner was not afforded the opportunity to rebut these comments before they were forwarded to NPC. See enclosure (4).

g. By memorandum dated 4 January 2018,⁴ the Commander, Destroyer Squadron [REDACTED] endorsed the recommendation of the [REDACTED] Commander that Petitioner be DFC, but not required to show cause for retention in the naval service. See enclosure (5).

h. By memorandum dated 17 January 2018, the Commander, [REDACTED], endorsed the recommendation that Petitioner be DFC, but recommended contrary to the lower chain of command that he also be required to show cause for retention in the naval service due to substandard performance of duty, efficiency and leadership. See enclosure (6).

i. On 25 January 2018, the [REDACTED] Commander issued Petitioner a regular FITREP for the period 4 February 2017 to 18 January 2018. This FITREP assigned Petitioner a trait average of 2.86, compared to his summary group average of 3.74, and a “Promotion Recommendation” of “Promotable,” which was tied for the lowest among his peers. It also included the following statement: “Unfortunately, [Petitioner] had difficulty prioritizing tasks and promoting a culture built on teamwork and trust, which resulted in his removal as Engineer Officer.” Petitioner was not provided the opportunity to review or comment upon the FITREP prior to its submission.⁵⁶ See enclosure (7).

j. On 19 April 2018, Petitioner submitted a “statement to the record” in response to his FITREP for the period 4 February 2017 to 18 January 2018. This statement alleged that “[t]he content and handing of this report suggest that [Petitioner] was not being provided with a fair and impartial account of [his] performance during this period.” He also noted that he was continuously available to review and sign the FITREP. See enclosure (8).

k. On 30 April 2018, Petitioner submitted a complaint against his commander in accordance with Article 138, Uniform Code of Military Justice (UCMJ), alleging that his FITREP “was prepared and endorsed not in accordance with [his] rights under [reference (c)] and is now part of [his] OMPF.” He also alleged that his 19 April 2018 statement (see paragraph 3j above) was not

⁴ The memorandum is mistakenly dated 4 January 2017, but based on the sequencing of endorsements it is clear that the 2017 date was a mistake.

⁵ The FITREP includes a hand-written note in place of Petitioner’s signature stating “Certified copy provided.”

⁶ Block 29 of this FITREP was supplemented by memorandum dated 1 May 2018 due to a clerical oversight by adding the following language: “WATCH: Command Duty Officer-6.”

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endorsed and forwarded to the NPC within 10 days in accordance with reference (c). See enclosure (8).

l. On 30 April 2018, Petitioner's commander issued Petitioner a non-observed FITREP for the period 1 February 2018 to 4 May 2018 upon the commander's detachment from command. See enclosure (9).

m. By memorandum dated 14 May 2018, the Deputy Chief of Naval Personnel (CNP) approved the recommendation that Petitioner be DFC due to substandard performance of duty over an extended period of time. See enclosure (10).

n. On 21 May 2018, the FY 2019 Navy Active-Duty LCDR (Line) PSB convened, and did not select Petitioner for promotion. This constituted Petitioner's first FOS for promotion. See enclosure (8).

o. On 16 July 2018, Petitioner submitted another complaint against his commander in accordance with Article 138, UCMJ, alleging that his previous complaint (see paragraph 3k above) was not handled in accordance with policy. He also alleged that "[t]his pattern of errors, inaccuracies, and distortions further suggest that [he has] not been provided with a fair and impartial account of [his] performance, as evaluated by [his commander], and [his] rights ... are being disregarded. See enclosure (8).

p. On 21 August 2018, Petitioner's general court-martial convening authority responded to Petitioner's Article 138, UCMJ, complaint, finding it to be without merit. See enclosure (8).

q. On 30 August 2018, a BOI found that the preponderance of the evidence did not support the allegations of substandard performance of duty against Petitioner.⁷ See enclosure (11).

r. By memorandum dated 17 September 2018, the NPC Commander notified Petitioner that the BOI voted to retain him in the naval service. See enclosure (12).

s. On 20 May 2019, the FY 2020 Navy Active-Duty LCDR (Line) PSB convened and did not select Petitioner for promotion. This constituted Petitioner's second FOS for promotion. See enclosure (8).

t. By message dated 17 September 2019, Petitioner was issued mandatory separation orders with a separation date not later than 1 March 2020 due to his two FOS for promotion in accordance with reference (b). See enclosure (13).

⁷ The allegations that Petitioner demonstrated substandard performance of duty by failing to demonstrate acceptable qualities or leadership required of an officer in the member's grade and failing to conform to prescribed standards of military deportment were unanimously unsubstantiated. The allegations that he demonstrated substandard performance of duty by failing to properly discharge duties expected of officers of the member's grade and experience was unsubstantiated by a 2-1 vote, with the minority member finding sufficient evidence to support this allegations based on the commander's DFC request and evidence that the [REDACTED] Engineering Department was rated below average on multiple inspections.

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u. On 16 January 2020, Petitioner received a favorable FITREP for the period 1 February 2019 to 31 October 2019 upon the detachment of his RS. Although this FITREP was favorable, block 21 (Billet Subcategory) was marked "APPROVED," reflecting that Petitioner had an approved separation date. See enclosure (14).

v. On 9 February 2020, Petitioner received another favorable FITREP for the period from 1 November 2019 to 31 January 2020. Although favorable, it included the following language in block 41: "SVCMBR INVOLUNTARILY SEPARATING HONORABLY IN FEB. NAVY IS LOSING A VALUABLE OFFICER!" Block 21 also continued to be marked "APPROVED." See enclosure (15).

w. On 9 February 2020, Petitioner's RS issued Petitioner a non-observed FITREP for the period 1 February 2020 to 1 March 2020, in anticipation of his separation from the Navy which was at the time scheduled for 1 March 2020. Block 41 of this FITREP made specific references to Petitioner's pending separation from the Navy. See enclosure (16).

x. On 25 February 2020, this Board directed certain corrections to Petitioner's naval record in Docket No. 0423-19. Specifically, the Board directed that the subject FITREP be modified to remove a sentence which rendered it adverse;⁸ that Petitioner's FOS by the FY 2019 and FY 2020 Navy Active-Duty LCDR (Line) PSBs be removed from Petitioner's record; and that a SSB be convened to reconsider Petitioner for the FY 2019 Navy Active-Duty Navy LCDR (Line) PSB.⁹ This action had the effect of canceling Petitioner's mandatory separation under reference (b). The Board, however, found no error or injustice in Petitioner's DFC from his position onboard the [REDACTED]. See enclosure (8).

y. On 23 March 2020, Petitioner requested reconsideration of the Board's previous determination in Docket No. 0423-19 that there was no error or injustice in his DFC from the [REDACTED]. Specifically, he asserted that the DFC request was not in compliance with reference (d), and that NPC (PERS-834) should not have approved the DFC request as submitted and without further cause from the requesting command.¹⁰ See enclosure (1).

⁸ The sentence removed read as follows: "Unfortunately, [Petitioner] had difficulty prioritizing tasks and promoting a culture built on teamwork and trust, which resulted in his removal as Engineer Officer."

⁹ The Majority of the Board in Docket No. 0423-19 did not find an error in the submission of the subject FITREP in Petitioner's record based upon the finding of PERS-32 that the FITREP was not adverse. The Board's Executive Director, however, disagreed with this finding as it pertained to inclusion of the sentence discussed in footnote 8 above, and recommended that the sentence be redacted to remove the error in the failure to permit Petitioner to review an otherwise adverse FITREP. The Executive Director also recommended, contrary to the recommendation of the Majority, that Petitioner's FOS for the FY 2020 Active-Duty Navy LCDR Line PSB be removed in addition to his FY 2019 FOS. The approval authority adopted the findings and recommendations of the Executive Director on 28 February 2020.

¹⁰ The errors specifically cited by Petitioner were that the DFC request cited to reference (e), which pertains to enlisted personnel, rather than reference (d), and as a result of this error he was informed of his right to submit a written statement with 10 days, rather than the usual "15 days" cited in reference (d), and not informed that the DFC request would be filed in his record if approved; he was not afforded the opportunity to respond to the comments made by his command in enclosure (4) regarding his comments in enclosure (3); no FITREP, training records, or interview comments were included with the DFC request, as required by reference (d); and the show cause recommendation in enclosure (6) referred to a superseded Department of Defense policy (DODI 1332.30, 25 November 2013) rather than the applicable service-specific policy (SECNAVINST 1920.6C, Ch. 5, 26 August 2015).

z. In April 2020, Petitioner's former direct supervisor onboard the [REDACTED], who had since been elevated from his position as executive officer to command of the [REDACTED], was relieved of command for misleading his higher command regarding the ship's position and status. See enclosure (17).

aa. By memorandum dated 29 May 2020, NPC (PERS-834) provided an advisory opinion (AO) for the Board's consideration, recommending that Petitioner's application be denied. The AO addressed each of the errors alleged by Petitioner in paragraph 3y above, opining that there was either no error or the errors were harmless (i.e., citing to the wrong regulation in the DFC request was harmless since the request was processed in accordance with the correct regulation). See enclosure (18).

bb. On 30 June 2020, Petitioner's FY 2019 Navy Active-Duty LCDR (Line) SSB, ordered pursuant to Docket No. 0423-19 as discussed in paragraph 3x above, was convened, and did not select Petitioner for promotion despite the modification to his FITREP. See enclosure (19).

cc. On 13 July 2020, the FY2021 Active-Duty Navy LCDR (Line) PSB, which was originally scheduled for 18 May 2020, was convened, and also did not select Petitioner for promotion. Along with his 30 June 2020 FOS by the FY 2019 Navy Active-Duty Navy LCDR (Line) PSB, this constituted Petitioner's second FOS for promotion. See enclosure (20).

dd. On 13 July 2020, Petitioner received a Defense Meritorious Service Medal (DMSM) for his service as part of the United States Military Training Mission in Saudi Arabia. See enclosure (21).

ee. By memorandum dated 14 September 2020, Petitioner requested assignment of the subspecialty code 2101S, to reflect his significant experience in the [REDACTED], and/or [REDACTED]. See enclosure (22).

ff. By memorandum dated 1 October 2020, Petitioner's command submitted a supplemental FITREP for the period 1 November 2019 to 31 January 2020 as a result of the Board's action in Docket No. 0432-19 removing Petitioner's mandatory separation date. As a result of this change in circumstances, Petitioner's RS reassessed Petitioner's performance during the period in question, and requested that his trait average should be adjusted from 3.0 to 4.33, and rewrote the narrative in block 41 to remove reference to Petitioner's separation and the "APPROVED" entry in block 21. See enclosure (15).

gg. On 14 October 2020, Petitioner's record was updated to reflect the subspecialty code of 2101S. See enclosure (23).

hh. By memorandum dated 19 November 2020, Petitioner's RS submitted a supplement letter for his FITREP for the period 1 February 2019 to 31 October 2019, requesting that Block 21 be changed from "APPROVED" to "N/A" as a result of the Board's removal of Petitioner's mandatory separation status in Docket No. 0423-19. See enclosure (14).

ii. By message dated 10 December 2020, Petitioner was issued mandatory separation orders with a separation date not later than 1 May 2021 due to his two FOS for promotion in accordance with reference (b).¹¹ See enclosure (24).

jj. By memorandum dated 1 July 2020, Petitioner responded to the PERS-834 AO discussed in paragraph 3aa above. Included with this response was a point-by-point rebuttal of the PERS-834 conclusions. He further argued the existence of injustices in his DFC by refuting the facts asserted by his commander in enclosure (4), which he was not previously afforded the opportunity to rebut. Petitioner also provided evidence of his former supervisor's relief for cause (see paragraph 3z above), noting that this individual had "significant influence over the perceptions, decisions, and actions taken by the entire chain of command throughout this case," and that "[h]is proven willfulness to misrepresent factual matter[s] to superiors and coerce others to do the same places the entire content of [the DFC request] into question." Based upon the accumulation of errors, violations of his due process rights, and the overall questions regarding the integrity and judgment of the supervisor who influenced the DFC request, Petitioner argued that retention of the DFC request in his record was inequitable and wrongfully has denied him a fair opportunity to continue progression in his Navy career. See enclosure (25).

kk. By memorandum dated 14 December 2020, Petitioner supplemented his 23 March 2020 reconsideration request (see paragraph 3y above) after his FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB and the FY 2021 Navy Active-Duty LCDR (Line) PSB, suggesting that it was the continued presence of the unfair DFC request and the documents associated with it in his records which resulted in his FOS. In this supplement, Petitioner requested the following relief in addition to the removal of the DFC request and all associated documents in his record:

(1) Removal of his mandatory separation date of 1 May 2021, which arose due to his FOS by the FY19 SSB and FY21 PSB.¹²

(2) Removal of Petitioner's "non-due course" status with NPC (PERS-41), with insertion of a Field Code 03 letter from NPC (PERS-4).

(3) Removal of Petitioner's FITREPs for the periods covering 4 February 2017 to 18 January 2018 and 1 February 2018 to 4 May 2018, and the insertion of a continuity memorandum in place of these FITREPs indicating that the reports have been removed by order of the Secretary of the Navy (SECNAV).

(4) Removal of the documents in Petitioner's record referencing the issuance of previous DD Form 214s as a result of his previous mandatory separations which were removed from his record; and the documents which were added to his record in anticipation of his 1 March 2020 mandatory separation date which was subsequently removed.

(5) The correction of Petitioner's FITREP for the period 1 February 2019 to 31 October 2019 by changing Block 21 from "APPROVED" to "N/A," as requested by his RS, and removal of the Letter Supplement.

¹¹ These separation orders were later amended to require separation no later than 1 June 2021.

¹² This relief has since been granted by the Board in Docket No. 3225-21.



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(6) Replacement of Petitioner's FITREP for the period 1 November 2019 to 31 January 2020 with the supplemental FITREP requested by his RS.

(7) Correction of Petitioner's Performance Summary Record (PSR) by removing all entries associated with the FITREPs covering the periods 4 February 2017 to 18 January 2018 and 1 February 2018 to 4 May 2018, with an annotation that they were removed by order of the SECNAV; and incorporating the updated trait grades and summary averages reflected in the supplemental FITREP covering the period 1 November 2019 to 31 January 2020.

(8) Removal of all PSR entries associated with the FITREP for the period 1 February 2020 to 1 March 2020.

(9) Removal of the non-observed FITREP for the period 1 February 2020 to 1 March 2020.

(10) Removal of Petitioner's FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB.

(11) Reconvening of Petitioner's FY 2019 Navy Active-Duty LCDR (Line) SSB.

(12) Removal of Petitioner's FOS for the FY 2021 Navy Active-Duty LCDR (Line) PSB.¹³

(13) Adding the DMSM earned by Petitioner to his record.

(14) Adjusting the effective date of Petitioner's 2101S Subspecialty Code to 14 February 2020.

(15) Convening a FY 2021 Navy Active-Duty LCDR (Line) SSB.

(16) Granting constructive service credit in the Surface Warfare Officer basic career path from 31 October to the present, which he was denied as a result of the DFC.

See enclosure (26).

II. On 24 May 2021, the Board found in Docket No. 3225-21 that Petitioner's FOS by the FY 2021 Navy Active-Duty LCDR (Line) PSB was an injustice because substantive corrections were made to this FITREPs after his FOS by the PSB (see paragraphs 3ff and 3hh above). Accordingly, the Board directed that Petitioner's FOS by the FY 2021 Navy Active-Duty LCDR (Line) PSB be removed from his record, thus nullifying his mandatory separation date of 1 June 2021. The Board found no error or injustice, however, in Petitioner's FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB. See enclosure (20).

¹³ This relief has since been granted by the Board in Docket No. 3225-21.

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MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that partial relief is warranted in the interests of justice.

The Majority was not convinced by Petitioner's original contention that the administrative and procedural errors contained within the DFC request warranted relief. In this regard, the Majority agreed with the conclusions of the PERS-834 AO at enclosure (18). While the Majority acknowledged that the DFC request cited to the wrong regulation, this error was clearly harmless and did not adversely affect Petitioner. The evidence clearly reflects that Petitioner was aware and exercised his rights, and that the proper procedures were followed despite the reference to the wrong regulation. Further, the reference to a Department of Defense regulation rather than the governing service-level regulation in the enclosure (6) was also clearly harmless. PERS-834 properly processed this request, and Petitioner's unusual focus upon these clearly harmless and technical errors was not persuasive.

The Majority was, however, persuaded by Petitioner's argument that the actual DFC request and subsequent BOI was unjust given the totality of the circumstances. In particular, the Majority noted that Petitioner's immediate supervisor onboard the [REDACTED], who undoubtedly influenced perceptions of Petitioner and the ultimate DFC request, was recently relieved for cause under circumstances that raised significant questions about his integrity. Accordingly, the Majority determined that the actions taken or influenced by this individual with regard to Petitioner should not be afforded the presumption of regularity that would otherwise be applied, and that the comments in the DFC request regarding Petitioner's performance should be considered in the context of his supervisor's compromised integrity. Taken in conjunction with Petitioner's overall naval record and the numerous character references that he provided, both of which seem to describe an entirely different officer than the one described in the DFC request, the Majority found Petitioner's description of the events that resulted in the DFC request to be more credible than those described in the DFC request itself. Accordingly, the Majority was convinced that Petitioner was the victim of an injustice at the hands of his former supervisor, who undoubtedly exerted significant influence over the perceptions, decisions, and actions taken by the entire chain of command throughout his case. Further, the injustice of this DFC request created a cascade effect, whereby Petitioner has been unjustly denied competitiveness for promotion.

Having determined the existence of an injustice in Petitioner's DFC request and subsequent BOI, the Board determined that the DFC request, all endorsements or references to it, and all references to the subsequent BOI that resulted from the DFC request, should be removed from Petitioner's record. Specifically, the Majority determined that the following documents related to the DFC request and subsequent BOI should be removed from Petitioner's naval record: the actual DFC request and all of its endorsement (OMPF Document No. 61569023); the DFC approval memo (OMPF Document No. 61569024); the BOI findings and vote sheet (OMPF Document No. 62300897); the "Status in the Navy" memorandum from the CNP informing Petitioner of the results of the BOI (OMPF Document No. 62300896); and Petitioner's statement for the record (OMPF Document No. 66499531).



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The Majority also found that certain documents were added to Petitioner's naval record in anticipation of his previous mandatory separation dates, which the Board removed in Docket No. 0423-19 and Docket No. 3225-21. The presence of these documents in Petitioner's record constitutes an injustice because they have the potential to alert future PSBs or SSBs of his previous FOS. Accordingly, the Majority determined that the following documents related to Petitioner's previous mandatory separation dates should be removed from his record: the DD Form 214 with a separation date of 29 February 2020 which was signed on 28 February 2020 and the associated memorandum requesting its removal dated 19 May 2021 (OMPF Document No. 2718020); the DD Form 214 with a separation date of 29 February 2020 which was signed on 3 March 2020 and the associated memorandum dated 19 May 2021 requesting its removal (OMPF Document No. 2731079); the NAVPERS 1070/880 (Awards Record) (OMPF Document No. 2723197); the NAVPERS 1070/605 (History of Assignments) (OMPF Document No. 2723208); the Member Data Summary (OMPF Document No. 2723213); and the NAVPERS 1070/881 (Training Education and Qualification History) (OMPF Document No. 2723215).

Block 21 of Petitioner's FITREP for the period 1 February 2019 to 31 October 2019 was marked as "APPROVED" because Petitioner had an approved separation date at the time that it was issued. The presence of this marking subsequent to the Board's previous removal of his mandatory separation date has the potential to alert future PSBs or SSBs of Petitioner's previous FOS, and therefore constitutes an injustice. Accordingly, the Majority determined that Block 21 of Petitioner's FITREP for the period 1 February 2019 to 31 October 2019 (OMPF Document No. 65635283) should be changed to reflect "N/A," and that the Letter Supplement that was previously submitted to change this entry should be removed to eliminate traces of his previous FOS.

Petitioner's original FITREP for the period 1 November 2019 to 31 January 2020 was favorable, but it was prepared under the assumption that Petitioner was pending a mandatory separation which was subsequently removed. As a result, his trait grades were not as high as they otherwise would have been, as reflected his the supplemental report submitted by his RS, and the FITREP includes other markings and narrative comments reflecting his pending separation status. This constitutes an injustice. Accordingly, the Majority directs that Petitioner's original FITREP for the period 1 November 2019 to 31 January 2020 and its letter supplement (OMPF Document No. 65621747) be removed from Petitioner's record, leaving only the supplemental FITREP for this rating period provided by Petitioner's RS which reflected a 4.33 member trait average remaining in Petitioner's record. Additionally, Petitioner's PSR is to be amended to reflect this change.

Petitioner's non-observed FITREP for the period 1 February 2020 to 1 March 2020 was issued under the assumption that he was pending a mandatory separation which was subsequently removed. Accordingly, the presence of this FITREP from Petitioner's record constitutes an injustice since its contents could alert future PSBs or SSBs of his previous FOS. For this reason, the Board directs that this FITREP (OMPF Docket No. 65621747) be removed from Petitioner's record, and replaced with an appropriate continuity memorandum. All reference to this FITREP should also be removed from Petitioner's PSR.

The Majority noted that Petitioner's FY 2019 Navy Active-Duty LCDR (Line) SSB considered Petitioner's record with his previous DFC, and the BOI report, which the Board has found to be



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an injustice as discussed above. Accordingly, the Majority determined that Petitioner did not receive fair consideration, and directs that his FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB be removed from his record, and that the 2019 Navy Active-Duty LCDR (Line) SSB be reconvened to consider Petitioner for promotion with his record as it would appear at the time subject to the changes directs herein. This includes the removal of any and all documents in Petitioner's record referencing his FOS by the SSB, to include enclosure (19).

As the Board already removed Petitioner's FOS by the FY 2021 Navy Active-Duty LCDR (Line) PSB and his mandatory separation date of 1 May 2021 in Docket No. 3225-21, the Majority did not consider these requests. As a result of the removal of this FOS, and his FOS for the FY 2019 Navy Active-Duty LCDR (Line) SSB as discussed above, Petitioner will remain eligible for consideration by the next regularly scheduled PSB even if not selected by the reconvened FY 2019 Navy Active-Duty LCDR (Line) SSB. Accordingly, the Majority determined that it was not necessary to convene a FY 2021 Navy Active-Duty LCDR (Line) SSB to alleviate any error or injustice.

The evidence reflects that Petitioner's DMSM and 2101S Subspecialty Code have already been added to his record. These documents were not eligible for consideration by the FY 2021 Navy Active-Duty LCDR (Line) PSB, so there was no error or injustice in their absence from Petitioner's record at the time that that PSB was convened.

As the Board previously removed the adverse matters in Petitioner's FITREP for the period 4 February 2017 to 31 January 2018 in Docket No. 0423-19, the Majority found no error or injustice in the inclusion of this FITREP in Petitioner's naval record, as amended pursuant to its previous decision. Accordingly, the Majority determined that this FITREP should not be removed from Petitioner's record.

The Majority found nothing about Petitioner's non-observed FITREP for the period 1 February 2018 to 4 May 2018 to be adverse. Accordingly, it found no error or injustice in this FITREP, and therefore that it should not be removed from Petitioner's record.

Finally, other than the fact that his tour onboard the [REDACTED] was cut short, the Board found no evidence that Petitioner's career path was altered or affected by his DFC. Petitioner's assignment history was a manpower issue based upon the needs of the Navy, and not an error or injustice in Petitioner's record. Accordingly, the Majority was not willing to grant Petitioner's request to direct PERS-41 to remove Petitioner's purported "non-due course" status, or to direct PERS-4 to insert a Field Code 03 letter in his record. Likewise, the Majority was not willing to grant Petitioner constructive service credit in the Surface Warfare Officer basic career path from 31 October to the present.¹⁴

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

¹⁴ In this regard, the Majority believed that such relief would be beyond its authority or mandate to grant even if it believed it warranted.



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That the following records related to Petitioner's DFC, and the BOI which resulted from the DFC action, be removed from Petitioner's record in their entirety: The original DFC request memorandum, dated 30 October 2017, and all endorsements to that request to include Petitioner's response to the request, dated 11 November 2017 (OMPF Document No. 61569023); the memorandum approving the DFC request, dated 14 May 2018 (OMPF Document No. 61569024); the BOI Findings/Vote Sheet (OMPF Document No. 62300897); the "Status in the Navy" memorandum informing Petitioner that the BOI elected to retain him in the Navy, dated 17 September 2018 (OMPF Document No. 62300896); and Petitioner's statement for the record, dated 25 January 2019 (OMPF Document No. 66499531).

That Petitioner's FITREP for the period 1 February 2019 to 31 October 2019 be corrected by changing Block 21 to reflect "N/A," and that the Letter Supplement dated 19 November 2020 be removed from Petitioner's record. Further, Petitioner's PSR is to be changed to reflect this correction.

That Petitioner's original FITREP for the period 1 November 2019 to 31 January 2020, along with the Supplemental Letter dated 1 October 2020, be removed from Petitioner's record in their entirety, leaving only the supplemental FITREP submitted by Petitioner's RS with the 4.33 trait average for this rating period. Petitioner's PSR is to be changed to reflect this correction.

That Petitioner's FITREP for the period 1 February 2020 to 1 March 2020 be removed from Petitioner's record, and a continuity letter inserted in its place to cover this period. Petitioner's PSR is to be changed to reflect this correction.

That any and all documents which were added Petitioner's naval record in anticipation of his previous mandatory separation dates be removed, including but not necessarily limited to: the voided DD Form 214 reflecting a separation date of 29 February 2020 that was signed on 28 February 2020 and the memorandum dated 19 May 21 requesting removal of this DD Form 214 (OMPF Document No. 2718020); the voided DD Form 214 reflecting a separation date of 29 February 2020 that was signed on 3 March 2020 and the memorandum dated 19 May 21 requesting removal of this DD Form 214 (OMPF Document No. 2731079); the NAVPERS 1070/880 (Awards Record) (OMPF Document No. 2723197); the NAVPERS 1070/605 (History of Assignments) (OMPF Document No. 2723208); the Member Data Summary (OMPF Document No. 2723213); and the NAVPERS 1070/881 (Training Education and Qualification History) (OMPF Document No. 2723215).

That Petitioner's FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB be removed from his record.

That Petitioner's FY 2019 Navy Active-Duty LCDR (Line) SSB be reconvened to reconsider Petitioner for promotion subject to the changes to his record discussed herein.

That no further corrections be made to Petitioner's naval record.



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MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board also believed that partial relief is warranted in the interests of justice.

The Minority concurred with the Majority in all respects with one exception. Specifically, the Minority found no error or injustice in Petitioner's FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB. In making this finding, the Minority noted that the only substantial error in Petitioner's record when he was originally considered by the FY 2019 Navy Active-Duty LCDR (Line) PSB was the adverse FITREP for the period 4 February 2017 to 31 January 2018, and this FITREP was corrected by the Board prior to consideration by the SSB. Accordingly, the Minority did not believe that the removal of Petitioner's FOS by the FY 2019 Navy Active-Duty LCDR (Line) SSB, or the reconvening of the same SSB, was warranted.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board adopts all of the recommendations made by the Majority above, with the exception of the removal of Petitioner's failure of selection incurred by the FY 2019 SSB, and the convening of another FY 2019 SSB.

That no further corrections be made to 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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

10/19/2021

[REDACTED]

Executive Director

[REDACTED]

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ACTING ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS)
DECISION:

MAJORITY Recommendation Approved (Partial Relief – See Majority Recommendation Above)

~~MINORITY Recommendation Approved (Partial Relief – See Minority Recommendation Above)~~

~~Petitioner's Request Approved (Full Relief – All Majority Recommendations Above Approved; Remove Petitioner's FITREPs for the periods 4 February 2017 to 31 January 2018 and 1 February 2018 to 4 May 2018; Add continuity memoranda to cover these periods; Update Petitioner's PSR to reflect these changes; If Petitioner not selected for promotion by the reconvened FY 2019 Navy Active Duty LCDR (Line) SSB, convene a FY 2021 Navy Active Duty LCDR (Line) SSB)~~

Board Recommendation Disapproved for the following reason(s): _____

MAJORITY Recommendation Partially Approved (Partial Relief – All Majority recommendations approved except for the following for the reasons stated: _____

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]

[REDACTED]