



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

[REDACTED]
Docket No. 3580-20
Ref: Signature Date

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) Title 10 U.S.C. § 1552
(b) BUPERSINST 1610.10D
(c) ASN (M&RA) memo of 28 Nov 17 "Delegation of Authority to the Board for Correction of Naval Records (BCNR) to Direct the Convening of a Special Selection Board (SSB), Supplemental All-Fully-Qualified Officers List (AFQOL), and Special AFQOL"
(d) Title 10 U.S.C. § 14502
(e) SECNAVINST 1402.1

Encl: (1) DD Form 149 w/enclosures
(2) Fitness Report and Counseling Record for the reporting period 5 Jul 16 to 31 Mar 17
(3) Fitness Report and Counseling Record for the reporting period 1 Apr 17 to 30 Nov 17
(4) Fitness Report and Counseling Record for the reporting period 1 Dec 17 to 31 Mar 18
(5) Fitness Report and Counseling Record for the reporting period 5 Jul 16 to 31 Mar 17
(6) Fitness Report and Counseling Record for the reporting period 1 Apr 17 to 15 Jul 17
(7) Fitness Report and Counseling Record for the reporting period 16 Jul 17 to 16 Oct 17
(8) Fitness Report and Counseling Record for the reporting period 17 Oct 17 to 31 Mar 18
(9) NPC memo 1610 PERS-32 of 2 Nov 20
(10) NPC memo PERS-80/0373 of 1 Dec 20
(11) Petitioner's rebuttal of 17 Mar 21

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 removal of three Fitness Report and Counseling Records [reports] at enclosures (2) through (4), and to replace them with the four reports at enclosures (5) through (8). Petitioner also requests the convening of a special selection board (SSB).

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 25 March 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.

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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. Petitioner contends that the record is in error due to the wrong Commanding Officers (CO's) reporting on him, improper competitive grouping, and incorrect reporting dates. Additionally, the reports were submitted without his signature. Petitioner asserts that the Fiscal Year (FY) 2019 Navy Reserve Chief Warrant Officer 4 (CWO4) Promotion Selection Board did not select to allocation and that the material errors with his reports likely deprived him of fair and impartial consideration by the FY 2019 Promotion Selection Board.

c. The advisory opinion (AO) at enclosure (9), furnished by the Navy Personnel Command (PERS-32) determined that Petitioner's contentions regarding his contested reports have merit. PERS-32 reviewed Petitioner's history of assignments and noted that his orders indicate that he was cross-assigned for inactive duty in a pay status, but his permanent billet is located at SEAL TEAM [REDACTED]. Additionally, PERS-32 was unable to determine if the Reporting Seniors of the contested reports were delegated in writing to assume reporting senior authority. The Board also noted that PERS-32 does not have delegation letters on file, and without delegation, their authority as Reporting Senior and title of CO is in question. Accordingly, PERS-32 determined that the contested reports can be removed and replaced, if all replacement reports are properly signed by the Petitioner and are submitted in accordance with reference (b).

d. The AO at enclosure (10), furnished by the Navy Personnel Command (PERS-80) recommend disapproval of Petitioner's request for a FY 2019 Navy Reserve CWO4 SSB. In this regard, PERS-80 determined that Petitioner did not exercise reasonable diligence in order to ensure the completeness and accuracy of his record prior to the convening of the promotion selection board. PERS-80 determined that, pursuant to SECNAVINST 1402.1, a SSB is not warranted.

e. Petitioner's rebuttal to the PERS-80 AO contends that the opinion disregards or is lacking knowledge of the relevant extenuating circumstances. Specifically, Petitioner argues that he has exercised reasonable diligence in correcting the errors in his reports. He asserts that he first expressed concerns about his Reporting Seniors in 2017 no avail, and that his inability to have his record corrected should not be construed as a lack of reasonable diligence nor a lack of attempting. Petitioner claims that without cooperation, access, and proper designation of said Reporting Seniors, "all the diligence in the world will not produce a correct record." Petitioner argues that his situation involves an enterprise-wide force reorganization, multiple billet changes, incorrectly assigned reporting seniors, the disaggregated nature of the reserve force, and proper reporting senior inaccessibility due to operational deployments, and that overcoming these extenuating circumstances made "maintaining reasonably careful records" virtually impossible. Enclosure (11).

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f. Reference (c) delegated authority to this Board to direct the Chief of Navy Personnel (CNP) to convene a SSB, providing that the Board fully complies with the requirements and restrictions set forth in references (d) and (e).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants relief. The Board substantially concurred with the PERS-32 AO that the contested reports are suspect because the Reporting Seniors are shown as the COs, but a review of their records and fitness reports on file indicates otherwise. Moreover, PERS-32 was unable to determine if the Reporting Seniors were delegated in writing to assume reporting senior authority. The Board thus concluded that the reports at enclosures (2) through (4) shall be removed from Petitioner's OMPF, and replaced with the reports at enclosures (5) through (8).

With regard to Petitioner's request for a FY 2019 SSB, the Board agreed with the PERS-80 AO that, barring any extenuating circumstances, it appears that Petitioner did not exercise reasonable diligence in correcting his reports prior to the FY 2019 promotion selection board. The Board, however, determined that extenuating circumstances prevented Petitioner from correcting deficiencies in his record. The Board was specifically convinced by Petitioner's purported situation involving an enterprise-wide force reorganization, multiple billet changes, incorrectly assigned reporting seniors, the disaggregated nature of the reserve force, and proper reporting senior inaccessibility due to operational deployments. The Board thus concluded that, given the extenuating circumstances, a FY 2019 Navy Reserve CWO4 SSB is warranted.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

Petitioner's naval record be corrected by removing the reports at enclosures (2) through (4) and replacing them with the reports at enclosures (5) through (8), and signed by Petitioner.

Convene a FY 2019 Navy Reserve CWO4 SSB.

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.

4/15/2021

[REDACTED]

Executive Director

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Assistant General Counsel (Manpower and Reserve Affairs):

Reviewed and Approved Board Recommendation (Grant Relief)

~~Reviewed and Approved (Partial Relief—Remove and Replace Reports Only)~~

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

4/28/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]