



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

██████████  
Docket No: 7198-20  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, USN (RET),  
██████████

Ref: 10 U.S.C. § 1552

Encl: (1) DD Form 149 with attachments  
(2) NPC E-mail, subj: CUI – MNCC # 00591302: Inquiry ICO [Petitioner], 2 Aug 21  
(3) NAVADMIN 072/20, subj: Postponement of Selection Board Schedule, dtg 182232Z  
Mar 20  
(4) NAVADMIN 144/20, subj: Recommencement of Selection Boards and  
Announcement of Revised Schedule, dtg 152131Z May 20  
(5) Petitioner's MMPA History, as of 21 Dec 2020  
(6) DD Form 214  
(7) NAVADMIN 255/20, subj: FY-21 Active-Duty Navy E9 Advancement Selection  
Boards Results, dtg 151445Z Sep 20

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that he be reinstated to active duty status and promoted to Master Chief Petty Officer (E-9).
2. The Board reviewed Petitioner's allegations of error or injustice on 27 July 2021 and, pursuant to its regulations, determined that the corrective action 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 had an approved high year tenure (HYT) waiver to allow him to continue serving past 26 years from 31 July 2018 to 31 July 2020. Due to this waiver, Petitioner was eligible for consideration for the Fiscal Year (FY) 2021 Active-Duty Navy E-9 Advancement Selection Board, which was originally scheduled to convene on 30 March 2020. Petitioner had previously been non-selected for advancement to E-9 five times. See enclosure (2). In May 2019, Petitioner applied for regular retirement, to be effective upon the completion of his HYT waiver.

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[REDACTED]

c. By message dated 18 March 2020, the FY 2021 Active-Duty Navy E-9 Advancement Selection Board was indefinitely postponed. The message announcing the postponement also announced that eligible candidates with a HYT date between 1 July 2020 and 30 November 2020 may request a HYT waiver to 31 December 2020 to remain selection board eligible. See enclosure (3).

d. By message dated 15 May 2020, it was announced that the delayed FY 2021 Active-Duty Navy E-9 Advancement Selection Board would convene on 14 August 2020. See enclosure (4).

e. On 25 May 2020, Petitioner began terminal leave in advance of his approved retirement. See enclosure (5).

f. On 31 July 2020, Petitioner was officially retired and transferred to the fleet reserve. See enclosure (6).

g. The FY 2021 Active-Duty Navy E-9 Advancement Selection Board convened between 14 August 2020 and 29 August 2020. See enclosure (4).

h. By message dated 15 September 2020, the results of the FY 2021 Active-Duty Navy E9 Selection Boards were announced, and Petitioner was among those selected for advancement to E-9. See enclosure (7).

i. Petitioner contends that he was unaware of the option to extend his HYT waiver until after the results of the FY 2021 Advancement Selection Board were released. He would like to return to active duty and be promoted pursuant to his selection. Included with his application were numerous letters from various leaders in his former command endorsing his reinstatement to active duty and promotion to E-9.

#### MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority of the Board found the existence of an injustice warranting relief.

The injustice identified by the Majority arises from the unique circumstances of the indefinite delay upon the convening of the FY 2021 Active-Duty Navy E-9 Selection Board relative to Petitioner's personal circumstances. Under normal circumstances, the convening date, if not the results, of the Advancement Selection Board that Petitioner was eligible for would have been known long before Petitioner began final preparations for his retirement after 28 years of service. However, under the circumstances surrounding Petitioner's retirement and the uncertainty of the selection board, the Majority believed that he was unfairly denied the opportunity to submit a HYT waiver to await the selection board's results.

In finding an injustice under these circumstances, the Majority noted that Petitioner started terminal leave only 10 days after the publication of enclosure (4), which announced the rescheduled selection board date. This announcement was unique since the circumstances that

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necessitated the indefinite delay in the convening of the selection boards were unprecedented. Additionally, Petitioner was undoubtedly preoccupied during this period with the numerous tasks associated in preparing for retirement after a 28 year career, all of which would have been complicated by the circumstances the COVID-19 pandemic. The Majority believed that it was unreasonable to expect Petitioner to be aware of the reschedule selection board date under these circumstances. The Majority also noted that Petitioner had previously been non-selected for E-9 five times, so he personally would have been less likely than most to be looking for such an announcement in his final days in the Navy under the circumstances. Finally, the Majority considered the letters of support provided by Petitioner's command to determine that his restoration to active duty to serve in the rank for which he was selected is in the best interests of the Navy. Accordingly, the Majority concluded that Petitioner's record should be corrected by reinstating him to active duty and promoting him to E-9 pursuant to the FY 2021 Active-Duty Navy E-9 Advancement Board, provided that he is otherwise qualified.

#### 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 in the interests of justice:

That Petitioner be reinstated on active duty in the Navy within 90 days of the approval of this recommendation, provided that he is otherwise qualified, and that his record be corrected to reflect that he served continuously in the Navy without being retired on 1 July 2020. Petitioner's record shall also reflect his selection for advancement to Master Chief Petty Officer and, provided that he is otherwise qualified, he shall be advanced with the date of rate and effective date he would have received, had he not been retired on 1 July 2020.

If Petitioner does not meet aforesaid requirements, Petitioner's current retirement shall remain unchanged.

Assuming that Petitioner is otherwise qualified for reinstatement and promotion, that any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

That the Defense Finance and Accounting Service complete an audit of Petitioner's records to determine what, if any, compensation Petitioner may be entitled to as a result of this action.

#### MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice to warrant relief.

In making this determination, the Minority noted that Petitioner was on notice as of the 18 March 2020 publication of enclosure (3) that he could request a HYT waiver in order to remain on active duty until the results of the FY 2021 Advancement Selection Boards were published. This

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was long before Petitioner would have been distracted by the tasks associated with his pending retirement. The Minority found that the announcement date for the rescheduled selection boards was irrelevant in this regard, as Petitioner could and should have made a decision regarding a HYT waiver request when the selection board was delayed, rather than when it was eventually rescheduled. The Minority believed it likely that Petitioner did not request a HYT waiver at the time that the selection board was delayed due to his assumption, given his five previous non-selections, that he would not be selected, and that it is not appropriate to rely upon the unique circumstances of the pandemic to justify negating this conscious decision that he came to regret only after he was unexpectedly selected for promotion.

**MINORITY RECOMMENDATION:**

In view of the above, the Minority of the Board recommends that no corrective action be taken on 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.

8/23/2021

[REDACTED]

Executive Director

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

**MAJORITY Recommendation Approved (Grant Relief)**

**MINORITY Recommendation Approved (Deny Relief)**

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]