



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



Docket No: 8391-20
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) 10 U.S.C. § 1552
(b) 10 U.S.C. § 1370
(c) SECNAVINST 1920.6C, Ch. 4, Administrative Separation of Officers, 20 September 2011

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) CNP Memo 1920 Ser N1/003, subj: Retirement Grade Determination ICO [Petitioner], 15 January 2013
(4) NAVPERS 1626/7, Report and Disposition of Offense(s), 15 December 2011
(5) [REDACTED] CO Memo 5800 Ser 00/214, subj: Punitive Letter of Reprimand ICO [Petitioner], 21 December 2011
(6) [REDACTED] CO Memo 1611 Ser N01L/001, subj: Report of Nonjudicial Punishment ICO [Petitioner], 3 January 2012
(7) NPC Memo 1611 PERS-00/257, subj: Detachment for Cause ICO [Petitioner], 15 May 2012
(8) NPC Memo 1920 SER 834/013, subj: Request for Comments and Recommendation in the case of [Petitioner], 22 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 that his retirement grade be upgraded to Commander (CDR) (O-5).

2. The Board reviewed Petitioner's allegations of error or injustice on 31 August 2021 and, pursuant to its regulations, determined that no corrective action is warranted. 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.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.

c. Petitioner was appointed as a commissioned officer in the Navy on 1 July 1999. Prior to this appointment, he had more than 13 years of active service. See enclosure (2).

d. On 1 September 2010, Petitioner was promoted to the grade of CDR. See enclosure (3).

e. On 21 December 2011, Petitioner received non-judicial punishment (NJP) for violating the Navy Fraternalization Policy by wrongfully engaging in an unduly familiar relationship with a junior officer under his command, in violation of Article 92, Uniform Code of Military Justice (UCMJ).¹ His punishment consisted of a punitive written reprimand. See enclosure (4).

f. By memorandum dated 21 December 2011, Petitioner received the Punitive Letter of Reprimand (PLOR) awarded pursuant to his NJP. Petitioner acknowledged receipt of this PLOR and elected not to appeal it or to submit a statement. See enclosure (5).

g. By memorandum dated 3 January 2012, Petitioner's commander recommended that he be detached for cause (DFC) and required to show cause for retention in the naval service. See enclosure (6).

h. By memorandum dated 16 May 2012, the Commander, Navy Personnel Command (CNPC), approved the request of Petitioner's commander that Petitioner be DFC. See enclosure (7).

i. By memorandum dated 21 May 2012, Petitioner was notified that he was required to show cause for retention on active duty. See enclosure (3).

j. On 6 June 2012, Petitioner acknowledged his rights and elected to appear before a board of inquiry (BOI). See enclosure (3).

k. A BOI was subsequently convened which unanimously recommended that Petitioner be retired in pay grade O-5 (CDR) with an honorable characterization of service. See enclosure (3).

l. By memorandum dated 15 January 2013, the CNPC recommended, contrary to the BOI recommendation, that Petitioner be retired in the pay grade of O-4 with an honorable characterization of service. In making this recommendation, the CNPC described Petitioner's conduct as "inexcusable and a significant departure from what is normally expected of an O5, particularly in [Petitioner's] position." He further stated that Petitioner's "behavior showed a complete disregard for Navy Core Values and had a detrimental effect on good order and discipline on three other ships." Finally, he described Petitioner's service in pay grade O5 as unsatisfactory. See enclosure (3).

¹ This relationship included having multiple lunches and dinners with the junior officer; allowing her to spend the night at his personal residence on several occasions; forwarding her inappropriate e-mails, some of a sexual nature, between him and the junior officer's aunt; engaging in other improper social outings with the junior officer; and exchanging text messages and phone calls.

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m. On 31 January 2013, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) approved Petitioner's retirement in the pay grade of O-4 with an honorable characterization of service. See enclosure (3).

n. Effective 1 March 2013, Petitioner was retired from the Navy with an honorable discharge. He served a total of 27 years and 27 days of active service. See enclosure (2).

o. Petitioner contends that relief is warranted because the BOI recommended that he be retired in pay grade O-5. He asserts that "[t]his punitive action is a violation of [his] rights." See enclosure (1).

p. By memorandum dated 22 December 2020, the Navy Personnel Command (PERS-834) provided an advisory opinion (AO) for the Board's consideration. The PERS-834 AO noted that the ASN (M&RA) is only bound by the BOI's recommendation with regard to characterization of service, and not with regard to final retirement grade in accordance with reference (c), and that an officer is to be retired at the highest grade held honorably. The AO further noted that reference (b) requires a minimum of three years of satisfactory service to be retired in the highest grade attained, unless this time in grade requirement is reduced to two years by the Secretary of the Navy (SECNAV). The AO found that Petitioner's final retirement grade determination was made in accordance with references (b) and (c), and recommended that his request be denied. See enclosure (8).

CONCLUSION:

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

In accordance with reference (b), a commissioned officer of the Navy "shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily." The determination of whether an officer has served satisfactorily in a particular grade below the grade of rear admiral is made by the SECNAV (or his delegate). Reference (b) further provides that "[i]n order to be eligible for voluntary retirement ... in a grade above the grade of ... lieutenant ..., a commissioned officer of the ... Navy ... must have served on active duty in that grade for a period of not less than three years," except that the SECNAV may reduce such period to a period of not less than two years for any officer. This waiver authority, which is delegated by the Secretary of Defense, may not be delegated below the Service Secretary.

Petitioner was promoted to CDR on 1 September 2010, and began fraternizing with a junior officer under his command approximately one year later. This conduct represented a significant departure from that expected of a CDR. Further, in accordance with reference (c), "[t]he BOI determination [regarding the appropriate retired grade] is merely a recommendation and the final decision as to retirement grade rests with the SECNAV." Accordingly, there was no error or injustice in the ASN (M&RA)'s determination that Petitioner failed to serve satisfactorily in the grade of CDR. With the ASN (M&RA) having determined that Petitioner failed to serve satisfactorily in the grade of CDR, the highest grade that he could have served satisfactorily was O-4. The Board notes that BOI substantiated the misconduct against the Petitioner, and that Petitioner did not contest the legitimacy of his misconduct.

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Even if Petitioner's misconduct in the grade of CDR was not sufficient to render his service in that grade unsatisfactory, Petitioner did not serve long enough in grade to carry it into retirement. In accordance with reference (b), in order to retire in the grade of CDR, Petitioner would have had to serve in that grade for not less than three year unless that period was reduced by the SECNAV. The SECNAV did not reduce this period for the Petitioner, and given the circumstances of Petitioner's service in the grade of CDR there does not appear to be good reason for such consideration. Accordingly, Petitioner was appropriately retired in the pay grade of O-4.

RECOMMENDATION:

In view of the above, 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.

9/21/2021

[REDACTED]

Executive Director

ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) DECISION:

Board Recommendation Approved (Deny Relief)

SEP 28 2021

Petitioner's Request Approve (Grant Relief – Change Petitioner's Retired Grade to CDR (O-5))

[REDACTED]

Acting Assistant Secretary of the Navy
(Manpower and Reserve Affairs)