



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

██████████  
Docket No: 0332-21  
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. § 624  
(c) MILPERSMAN 1611-020, Officer Detachment for Cause, 30 March 2007  
(d) BUPERSINST 1610-10D, Navy Performance Evaluation System, 1 May 2015  
(e) DODI 1320.04, Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation, 3 January 2014  
(f) SECNAVINST 1420.3, Department of the Navy Commissioned Officer Promotion Program, 28 March 2019  
(g) MILPERSMAN 1611-010, Officer Performance and Separations for Cause, 30 October 2019

Encl: (1) DD Form 149 w/attachments  
(2) Petitioner Memo, subj: Relief for Cause, undated  
(3) E.W.B. E-mail, subj: IG Hotline Submission, sent Tuesday, October 18, 2016, @ 12:18:11 PM  
(4) U.S. Fleet Cyber Command CO Memo 5800 Ser N00J/522, subj: Investigation into Facts and Circumstances Surrounding Allegations that [Petitioner] Wrongfully Relieved Senior Enlisted Sergeant ██████████, USA, 29 November 2016  
(5) COMFLTCYBERCOM Memo 1611 Ser N00/073, subj: Detachment for Cause ICO [Petitioner], 23 February 2017  
(6) CNO Action Memo, subj: Removal of Permanent Promotion to Captain ICO [Petitioner], 30 May 2019  
(7) Petitioner's Memo, subj: Detachment for Cause ICO [Petitioner], 8 March 2017  
(8) Petitioner's Memo, subj: IG Complaint Regarding Improper Detachment for Cause, 21 March 2017  
(9) DODIG Letter, Case No. 20170328-043156-CASE-01, undated  
(10) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20160726 – 20170430)  
(11) Petitioner's Memorandum, 25 May 2017  
(12) NAVPERS 5854/2, Naval Equal Opportunity (EO) Formal Complaint Form, 20 June 2017  
(13) BUPERS Memo 1611 BUPERS-00/369, subj: Detachment for Cause ICO [Petitioner], 22 June 2017

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- (14) Petitioner's Memo, subj: Response to Detachment for Cause Approval, 13 July 2017
- (15) Petitioner's Memo 1420, subj: Response to COMFLTCYBERCOM'S Promotion Recommendation, 16 August 2017
- (16) ASN (M&RA) Memo, subj: Final Review of Formal Equal Opportunity Complaint Appeal ICO [Petitioner], 30 September 2019
- (17) BCNR Letter [REDACTED] Docket No: 188-18, 26 June 2019
- (18) Petitioner's Memo 1420, subj: Congressional Inquiry, 1 August 2019
- (19) PERS-00J Memo, subj: Advisory Opinion ICO [Petitioner], 21 February 2021
- (20) Petitioner's Counsel Letter, subj: [Petitioner], Responses and Submissions to the Advisory Opinion, Board for Correction of Naval Records docket no. NR20210000332, dated February 21, 2021, 14 April 2021

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, hereinafter referred to as the Board, requesting that her naval record be corrected by restoring her name to the Fiscal Year (FY) 2017 Active-Duty Navy Captain Line Special Duty Officer (Information Warfare) Promotion List; correcting her date of rank; removing her 22 June 2017 Detachment for Cause (DFC); correcting her fitness report (FITREP) for the reporting period 26 July 2016 to 30 April 2017; and correcting all other records and documents accordingly.<sup>1</sup> In enclosure (20), Petitioner supplemented her request for relief to include her restoration to active duty.<sup>2</sup>

2. The Board reviewed Petitioner's allegations of error or injustice on 7 December 2021 and, pursuant to its regulations, determined that no corrective action was warranted. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all of the evidence 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. On 4 September 2016, Petitioner assumed her duties as the Chief of the Cryptologic Services Group (CSG), [REDACTED], at [REDACTED]. At the time of her arrival, Petitioner was on the FY 2017 Active-Duty Navy Captain promotion selection list with a projected promotion date of 1 September 2017.

c. On 14 October 2016, Petitioner relieved her Senior Enlisted Leader (SEL)<sup>3</sup> for cause due to her loss of confidence in his ability to continue functioning in this role due to general

<sup>1</sup> This application constitutes a request for reconsideration of the Board previous denial of her request for relief in Docket No. 0188-18.

<sup>2</sup> Petitioner reached her mandatory retirement date subsequent to her submission of enclosure (1), but before her application had been adjudicated.

<sup>3</sup> The SEL was a U.S. Army Master Sergeant.

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disrespect, insubordination, poor judgment, abuse of authority and falsification in the form of misleading authority to satisfy a personal agenda.<sup>4</sup> See enclosure (2).

d. By e-mail dated 18 October 2016, the SEL filed an Inspector General Hotline complaint against Petitioner, alleging wrongful relief for cause and unjust persecution. The SEL reported that in the four days since Petitioner issued the above reference relief for cause memorandum, she had attempted to remove the SEL's security clearance and remove the SEL from the base and building. He also alleged that Petitioner drafted four documents accusing him of derogatory conduct, for which he was not afforded the opportunity to defend himself. The SEL stated his belief that Petitioner was pursuing these actions to protect a Navy Chief Petty Officer who had been recommended for punishment by a DRB based upon the counseling statements and charges initiated by the SEL. See enclosure (3).

e. By memorandum dated 29 November 2016, the Commander, U.S. Fleet Cyber Command (COMFLTCYBERCOM), appointed a command investigation (CI) into allegations that Petitioner wrongfully relieved her SEL.<sup>5</sup> See enclosure (4).

f. On 10 February 2017, the CI found that Petitioner was derelict in the performance of her duties as the [REDACTED] Chief by abusing the authority vested in her and creating a hostile work environment in violation of Article 92, Uniform Code of Military Justice (UCMJ). The most egregious example of such conduct was Petitioner's improper removal of her SEL, which included relieving him from his duties, denying him access to his work area, and attempting to bar him from the installation without authority and/or coordination with either her operational chain of command or the SEL's U.S. Army administrative chain of command. Petitioner reportedly took these actions despite being specifically counseled that she lacked the authority to do so unilaterally and that proper coordination with National Security Agency and Service elements would be required. In addition to Petitioner's improper relief of the SEL, the CI also described a series of incidents in which Petitioner created a hostile work environment by losing her temper, raising her voice, and generally displaying an aggressive demeanor. In addition to

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<sup>4</sup> The specific acts cited by Petitioner to justify this relief for cause were the following: (1) On 24 August 2016, the SEL allegedly allowed Petitioner to enter an unauthorized space after being direct by headquarters security not to do so, because he decided that the instruction was unlawful; (2) On 24 August 2016, the SEL allegedly neglected to invite the sitting Deputy to a meeting with CSG leadership, instead inviting only the Operations Officer and therefore maintaining a culture of divisiveness between military and civilian personnel; (3) The SEL convinced Navy senior enlisted leaders to conduct a Disciplinary Review Board (DRB) for charges already resolved by Petitioner's predecessor, contrary to the intent of her predecessor. Petitioner further alleged that the SEL embellished the DRB charges to ensure an outcome favorable to his intentions; (4) On 15 September 2016, the SEL removed a draft organization chart that Petitioner was preparing to present to the team on her vision for realignment, instead presenting it to the team himself with disparaging comments; (5) The SEL encouraged another service member to put in a package to pursue a career as an Army Warrant Officer, which Petitioner did not support. The SEL allegedly called Petitioner "immoral" for refusing to support the service member's career ambition. Petitioner contended that the SEL failed to take a holistic approach to this issue, by not considering the best interests of the mission and unit in addition to that of the member; and (6) Petitioner's receipt of an e-mail dated 5 October 2016. Although the contents of this e-mail were not revealed in enclosure (2), the copy of this e-mail provided by Petitioner revealed that the SEL objected to Petitioner's equating his integrity with that of the service member for whom he sought a DRB. In this e-mail, the SEL suggested that the insult to him presented by this assessment of his integrity should result in his relief for cause.

<sup>5</sup> COMFLTCYBERCOM was Petitioner's administrative commander.



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substantiating the above referenced misconduct, the CI also revealed several instances of substandard performance by Petitioner "due to gross negligence or complete disregard of duty."<sup>6</sup> See enclosure (5).

g. On 17 February 2017, Petitioner's operational chief ([REDACTED]) terminated her from her position as [REDACTED] Chief due to his loss of confidence in her ability to effectively perform her duties in that position. See enclosure (5).

h. On 22 February 2017, the Commander, Navy Personnel Command (NPC), delayed Petitioner's promotion to Captain based on National Security Agency (NSA) Inspector General complaints and the above-referenced CI into allegations that Petitioner abused her authority while serving as the [REDACTED] Chief. See enclosure (6).

i. By memorandum dated 23 February 2017, COMFLTCYBERCOM requested that Petitioner be DFC due to misconduct, substandard performance of duty, and loss of confidence. COMFLTCYBERCOM also recommended that Petitioner be removed from the FY 2017 Active-Duty Navy Captain promotion selection list because of "the significant examples of her substandard leadership and poor judgment as detailed in the [CI]," but recommended that she not be required to show cause for retention in the Navy, as "there may still be potential for her to learn from these circumstances, demonstrate improvement, and recover." This recommendation was provided to Petitioner for comment before being forwarded to NPC for action. See enclosure (5).

j. On 7 March 2017, Petitioner received a non-punitive letter of censure stating that she was derelict in her duties as the [REDACTED] Chief by exercising poor judgment. See enclosure (1).

k. By memorandum dated 8 March 2017, Petitioner responded to the COMFLTCYBERCOM DFC request discussed in paragraph 3i above. In this response,

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<sup>6</sup> These incidents were as follows: (1) Petitioner was specifically told by the [REDACTED] National Command Representative (NCR) SEL and the Chief of Staff, CSG EUCOM, not to take action to reassign her SEL without clear authorization from [REDACTED] leadership (i.e., the operational chain of command), specifically disagreeing with this advice and classifying the decision as "local" matter under her control. Petitioner also did not discuss or coordinate her relief for cause of her SEL with her administrative chain of command, and attempted to reassign her SEL (an E-8 from another Service) to another federal agency with no coordination. The CI found these collective actions to display gross negligence in failing to recognize the inappropriateness of her actions and the limits of her authority; (2) The CI found Petitioner to be grossly negligent in failing to coordinate her actions with regard to her Army SEL with his administrative chain of command in the U.S. Army; (3) Petitioner created the appearance of a clear conflict of interest by asking for the input of a subordinate service member in ranking her two First Class Petty Officers after one of those Petty Officers had testified against the subordinate member at his DRB hearing; (4) Petitioner was grossly negligent in determining within only five days of her arrival at [REDACTED] that the same subordinate service member need not be subjected to disciplinary action, contrary to the unanimous opinion of the most senior members of the unit. Further, her treatment of this member relative to her treatment of her Army SEL created the impression that she was affording this member preferential treatment; (5) Petitioner created a hostile work environment through her treatment of the SEL and of other subordinates who reported that she lost her temper, raised her voice, and at times displayed an aggressive demeanor; and (6) Petitioner displayed insubordinate conduct toward her operational chain of command by instructing her Deputy and Chief of Staff to exclude the [REDACTED] leadership from any discussions on matters of budget, personnel issues, and TDY plans after losing confidence in their leadership. Even after being advised by her Deputy and Chief of Staff that such an order was contrary to policy, she insisted that her orders were to be followed.

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Petitioner stood by her decision to relieve her SEL, but stated that she would have made it clear that she was "transferring" him rather than "relieving" him for cause as she believed that this lack of clarity prompted the investigation into whether she had command authorities as opposed to the right to remove a disruptive member from her unit. She also addressed each of the findings against her in turn:

(1) With regard to the finding that Petitioner unilaterally relieved her SEL for cause, Petitioner claimed to have consulted with both the operational chain [REDACTED] and her SEL's administrative chain [REDACTED] Military Intelligence Brigade). She acknowledged that she did not have command authority, per se, but asserted the right to remove a disruptive member of her organization when they inhibit good order and discipline regardless of rank or position. Finally, Petitioner stated that it was not her desire to adversely affect her SEL's military career, and that her error was in how she labeled the action that she took to remove him. She also claimed that the SEL's statement that she cursed at him upon delivering the relief for cause letter and called him a racist was false.

(2) Petitioner attributed the finding that she created a hostile work environment to her aggressive efforts to make the CSG a more effective and responsive organization to better serve the needs of the command. She claimed that these efforts met resistance from the CSG members, particularly from her SEL, as they disrupted the status quo.

(3) Petitioner attributed the findings that she overstepped her operational authorities to the lack of understanding by her operational chain of command regarding what she was trying to accomplish at the CSG, resulting in confusion and ultimately a lack of trust.

(4) Noting that the CI made numerous references to Petitioner's relative lack of time on station, Petitioner asserted that she had the authority to act immediately upon assuming responsibility for the CSG to take action. She also asserted that her actions were necessary to address concerns raised by the Director of the National Security Agency that the [REDACTED] was not fully operationally engaged.

(5) In response to the finding that she created the appearance of a clear conflict of interest by seeking input from a subordinate with a known reason to be biased regarding the ranking of subordinate petty officers, Petitioner asserted that that subordinate was not the only leader to provide such input. She claimed that the rankings provided by the conflicted subordinate matched the rankings provided by all of the leadership team, and that the conflicted subordinate actually provided favorable input for the petty officer who had testified against him. She also stated that she maintained final review authority, and that she would have intervened if any bias had been shown. Ultimately, she acknowledged that perception is reality, and that a better course of action would have been to exclude the conflicted subordinate from this process.

(6) While acknowledging that she raised her voice on occasion, Petitioner denied any mistreatment of subordinates. She cited her decisions not to punish the above referenced subordinate and her treatment of her SEL as examples of the regard that she demonstrated for her subordinates. She also alluded to her decision to keep her Deputy (and her family) in place to allow her daughter to finish high school, apparently contrary to the recommendation of the NCR

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[REDACTED] as another example of her demonstrated concern for her subordinates. Finally, Petitioner asserted that the changes that she was pushing for in the CSG would have made her employees more competitive for awards and leadership opportunities.

(7) Petitioner took exception to the finding that she was insubordinate with her operational chain of command. She attributed any misunderstandings in this regard to the habit of her staff of forwarding her ideas up the operational chain before they were fully developed. She also described an incident in which her deputy overheard a conversation that she had with her administrative commander regarding the support provided by her operational chain of command and “unethically” reported that conversation to the operational chain of command, which resulted in an immediate visit by the operational chain of command.

After addressing each of these findings, Petitioner addressed specific comments made during the course of the investigation in the context of the difficult issues that she was faced with upon arriving at [REDACTED] and asserted that all of the actions that she took were necessary and proper to maintain good order and discipline. Finally, while acknowledging some missteps during her tenure as the [REDACTED] Chief, Petitioner argued that these mistakes did not warrant her DFC, that she did not commit any illegal, unmilitary, or unethical acts, and that her record of accomplishment warranted favorable consideration. Petitioner also provided a letter of support from the Director of Intelligence, Joint Intelligence Operations Center [REDACTED] Center, attesting to her favorable performance as the [REDACTED] Chief with her response to the DFC request. See enclosure (7).

l. By memorandum dated 21 March 2017, Petitioner submitted a complaint to the Department of Defense Inspector General (DODIG) regarding the DFC recommendation that was served upon her. In this complaint, she asserted that the DFC violated reference (c), in that it failed in all regards for the three DFC bases cited,<sup>7</sup> and that the allegations of misconduct were entirely baseless. Petitioner asserted that her command used the DFC request as a “rash reaction” to her leadership decisions that they didn’t like, and that she never received any feedback, counseling, or opportunities to “correct course.” See enclosure (8). The DODIG subsequently determined that Petitioner’s allegations were not substantiated.<sup>8</sup> See enclosure (9).

m. On 25 May 2017, Petitioner received an adverse FITREP for the reporting period 26 July 2016 to 30 April 2017. Her reporting senior (RS)<sup>9</sup> rated Petitioner “Below Standards” in blocks

<sup>7</sup> Petitioner cited to paragraph 3.a. of reference (c), which states that “[o]nly in unusual instances will a DFC request by reason of misconduct be approved without disciplinary action having been taken by the command. If no disciplinary action is taken by the command the rationale for not taking action must be included in the request for the DFC.” Petitioner noted that there was no disciplinary action taken in her case, nor were there any “unusual circumstances” that would have prevented such and consequently provided her a proper opportunity to respond. With regard to the “substandard performance of duty” basis for the DFC request, Petitioner cites to paragraph 3.b. of reference (c), which requires that in order to use substandard performance of duty as a basis for DFC there must be evidence of “gross negligence or complete disregard for duty.” While Petitioner acknowledged that the DFC request stated that her actions constituted “gross negligence,” she argued that her decision to remove a disruptive member from her organization is a discretionary call and cannot legally rise to the level of “gross negligence.” Finally, Petitioner noted that “loss of confidence” as a basis for DFC requires that the officer be in a command billet.

<sup>8</sup> Enclosure (9) suggests that this determination was made by letter dated 8 December 2018.

<sup>9</sup> Petitioner’s RS was her immediate administrative commander, as opposed to the COMFLTCYBERCOM, who was echelons above the RS.



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34 (Command or Organizational Climate/Equal Opportunity), 35 (Military Bearing/Character), 36 (Teamwork), and 38 (Leadership), with a trait average of 1.86. In block 41, the RS explained that the adverse ratings were due to Petitioner's removal from her position as [REDACTED] Chief by the operational chain of command. With regard to her "Below Standards" rating for "Command Organizational Climate/Equal Opportunity," the RS stated that Petitioner "made decisions that undermined her credibility as an unbiased leader. She used coercion to gain compliance, and openly undermined her commander and his staff. Her methods created extreme toxicity in the office climate that undermined the mission." He explained that the rating for "Military Bearing/Character" was because Petitioner's "failure to create and support an appropriate workcenter climate are a demonstration of her failure to incorporate Navy Core Values into her leadership style." Regarding the adverse rating for "Teamwork," the RS stated that Petitioner "actively worked at cross purposes with her greater team. Despite verbal counseling from both ops and admin chains of command, she pursued activities outside the scope of assigned duties; and without authority or resources necessary for success." Finally, with regard to the rating for "Leadership," the RS explained that Petitioner "inadequately communicated within her staff and with higher HQ on multiple occasions. She failed to set goals and tasking relevant to assigned mission. She issued tasking that conflicted with standing policy and higher commander's intent." Finally, the RS stated that Petitioner "fails to demonstrate traits necessary for promotion or leadership assignment." See enclosure (10).

n. By memorandum dated 25 May 2017, Petitioner provided a statement in response to the adverse FITREP described in paragraph 3m above. While defending her actions and attacking the basis of the CI conclusions, Petitioner noted that the two people removed from [REDACTED] as a result of the false narrative painted about her were both African American, and asserted that her statements should carry the same weight as that of her accusers. She also denied that she had ever received verbal counseling regarding her actions from her operational or administrative chains of command, describing those interactions in a different manner. Finally, Petitioner highlighted her accomplishments as the [REDACTED] Chief, despite the obstacles she faced from her operational headquarters and within her own staff. See enclosure (11).

o. On 20 June 2017, Petitioner submitted a formal equal opportunity (EO) complaint, alleging racially discriminatory practices against both her operational and administrative chains of command. Citing to her adverse FITREP, she alleged that her RS "demonstrated behavior that clearly illustrated he encouraged and earnestly assisted the development of one ethnic group over the other" throughout her time as the [REDACTED] Chief.<sup>10</sup> She also contended that the CI which resulted in her relief and DFC was biased against her gender and race, and that its recommendation for DFC was in violation of reference (c). Finally, she alleged that her operational and administrative chains of command coordinated with her detailer to issue unexecutable orders (i.e., her orders were issued on 17 May 2017 with a detach date of May 2017), and that her detailer demonstrated "cruel and unusual harsh treatment towards [Petitioner] and [her] dependent when executing these orders," as there was no operational imperative requiring a rapid detachment. See enclosure (12).

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<sup>10</sup> As an example, Petitioner asserted that the RS's deputy was derelict in her responsibilities to support customer requirements and provide appropriate oversight to the [REDACTED], but no action was taken against her while Petitioner was relieved from her position for simply doing her job without any counseling.

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p. By memorandum dated 22 June 2017, the Deputy Chief of Naval Personnel approved the COMFLTCYBERCOM request that Petitioner be DFC due to substandard performance of duty due to one or more significant events, loss of confidence, and misconduct. This memorandum noted that reference (d) required a regular detaching FITREP, and that Petitioner must be provided the opportunity to submit a statement since it would be filed in her naval record. See enclosure (13).

q. By memorandum dated 13 July 2017, Petitioner submitted a response to the approval of her DFC. In addition to reiterating her previous statements regarding the challenging dynamics of her unit and denial of the allegations against her, Petitioner also reiterated her arguments that her DFC was in violation of reference (c) and highlighted her professional accomplishments. See enclosure (14).

r. By memorandum dated 16 August 2017, Petitioner provided a response to the COMFLTCYBERCOM recommendation that Petitioner be removed from the FY 2017 Captain promotion selection list (see paragraph 3i above). In this response, Petitioner asserted that she became unpopular at [REDACTED] only because she attempted to do the right thing by changing the status quo, and that her true character is reflected by the respect that she had earned throughout her career. She further argued that her DFC sent a message to junior personnel that is "okay to be dishonest" and that hardwork, perseverance and support of the service members dependent upon support is second to personal goals, as well as negatively impacted the unit's ability to implement the improvements that she had installed. Finally, she argued that her promotion would be consistent with the Navy Ethos, as a 45-day tenure should not erase her 23 years of exceptional performance. See enclosure (15).

s. On 26 September 2017, the COMFLTCYBERCOM took action on the EO investigation pertaining to Petitioner's administrative commander and the IO who conducted the CI which resulted in the DFC request,<sup>11</sup> unsubstantiating the allegations of gender and/or racial discrimination against these officers. See enclosure (16).

t. On 13 October 2017, Petitioner requested final review of the COMFLTCYBERCOM action on her EO complaint by the Secretary of the Navy (SECNAV), and submitted supplemental materials by letter dated 10 January 2018. See enclosure (16).

u. After being notified that National Security Agency (NSA) officials would not conduct an investigation of Petitioner's allegations of discrimination against the four NSA personnel named in her complaint, COMFLTCYBERCOM took it upon himself to direct an investigation of these allegations on 25 October 2018. On 28 February 2019, COMFLTCYBERCOM took action on this investigation, unsubstantiating Petitioner's allegations of gender and/or racial discrimination against these individuals. See enclosure (16).

v. On 12 March 2019, the Board denied Petitioner's first request to correct her naval record by removing her DFC and the adverse FITREP for the report period 26 July 2016 to 30 April

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<sup>11</sup> COMFLTCYBERCOM had forwarded Petitioner's EO complaint as it pertained to National Security Agency personnel not under his command authority for action as appropriate.



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2017, and by restoring her name to the FY 2017 Active-Duty Navy Captain promotion list,<sup>12</sup> in Docket No. 0188-18. In her application for Docket No. 0188-18, Petitioner contended that the findings of the CI were not factually supported; that her DFC was not in accordance with reference (c); that her FITREP was not factually supported, reflected a legally-flawed analysis, and did not contain her rebuttal statement; and that her promotion to captain was improperly delayed in violation of reference (b). The Board relied, in part, upon advisory opinions provided by the NPC Office of Legal Counsel (PERS-00J) and PERS-32 to find no error or injustice in Petitioner's naval record. See enclosure (17).

w. By memorandum dated 30 May 2019, the Chief of Naval Operations (CNO) recommended to the SECNAV that Petitioner's name be removed from the FY 2017 Active-Duty Navy Captain promotion selection list. In making this recommendation, the CNO stated that Petitioner "demonstrated poor leadership and judgement [sic] during her tenure as Chief of [REDACTED]. An officer of her experience should have understood her mission and authority before executing significant decisions. Although her intent to improve the efficiency of [REDACTED] was laudable, [Petitioner] did not adequately coordinate her actions with her operational chain of command or other armed services. Further, [Petitioner] failed to heed the counsel of her unit's senior military and civilian members when they raised legitimate concerns about her decisions on military personnel and operational matters." He further noted that the promotion selection board which selected Petitioner for promotion did not consider these matters when evaluating Petitioner's suitability for promotion. Accordingly, the CNO stated that he does "not have the necessary trust and confidence to recommend [Petitioner's] promotion to captain at this time." See enclosure (6).

x. By signature dated 12 June 2019, the SECNAV approved the CNO's recommendation that Petitioner's name be removed from the FY 2017 Active-Duty Navy Captain promotion selection list. See enclosure (6).

y. By memorandum dated 1 August 2019, Petitioner submitted a "rebuttal" to the SECNAV's decision to remove her from the FY 2017 Active-Duty Navy Captain promotion selection list to NPC. She stated that the rebuttal was being submitted in coordination with the office of her congressman because the exculpatory evidence which she attached was not considered in rendering the decision. She again reiterated that the charges of abuse of authority, misconduct, and substandard performance of duty were not substantiated by facts, but rather taken from an "impartial"<sup>13</sup> investigation resulting in a wrongful DFC, and adverse FITREP, and the removal of her name from the promotion list. She also reiterated her previously made arguments that the DFC was in violation of reference (c) because she received no disciplinary action, suggesting that the DFC was used in lieu of disciplinary action or administrative discharge; that she actually did coordinate the actions labeled as an abuse of her authority with both the operational and administrative chains of command, contrary to the findings of the CI; and that she was charged with misconduct, but not given non-judicial punishment, therefore denying her the opportunity to have her case fully litigated. She also asserted that her promotion

<sup>12</sup> The Board noted that Petitioner had not yet been removed from the promotion list as of the convening date of Docket No. 0188-18, so that issue was deemed not to be ripe for consideration.

<sup>13</sup> Petitioner described the investigation as "impartial," but the Board inferred by the context that she meant to describe the CI as "partial."

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was delayed for more than two and a half years, in violation of reference (b),<sup>14</sup> and that the elevation of her DFC recommendation to the COMFLTCYBERCOM was not warranted. Petitioner further argued that her SEL would not have been reassigned by her operational chain if she not actually completed proper coordination, that her performance was not “substandard” since she completed all of her mission requirements, and that she was not “insubordinate” because it is not insubordination to require subordinates to utilize the chain of command. Finally, Petitioner stated that she has continued to demonstrate her commitment to the Nation and the Navy through her performance despite the adversity. See enclosure (18).

z. On 5 September 2019, Petitioner requested reconsideration of the DODIG determination that her reprisal complaints either did not warrant further investigation or were not substantiated.<sup>15</sup> DODIG subsequently informed Petitioner that her reprisal allegation did not warrant an investigation because initiation of the CI preceded her first protected communication and was based on a series of third party complaints of wrongdoing against her. Accordingly, DODIG closed her case. See enclosure (9).

aa. By memorandum dated 30 September 2019, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) responded to Petitioner’s request for Secretarial review of the COMFLTCYBERCOM action on her EO complaint, denying her complaint. This memorandum informed Petitioner that her appeal and the administrative record were reviewed by the Deputy Director, Administrative Law Division, Office of the Judge Advocate General in accordance with applicable regulations, who determined that COMFLTCYBERCOM substantially complied with applicable regulations by not substantiating Petitioner’s allegations of gender and/or racial discrimination against her administrative commander and the CI IO; properly forwarded Petitioner’s allegations against the other four individuals named in her complaint who were not under his commander to the NSA; and was not required by regulations to investigate Petitioner’s allegations against those other four individuals not assigned to his command, but nevertheless complied with those regulations by not substantiating her allegations of gender and/or racial discrimination against those four individuals. See enclosure (16).

bb. In her current request for reconsideration of the Board’s decision in Docket No. 0188-18, Petitioner contends that the Board arbitrarily denied her previous request.<sup>16</sup> She asserted that she presented “irrefutable evidence showing that she was wrongfully [DFC], that her performance was excellent, and that she did not engage in any misconduct.” She also reiterated her previously made claims that the CI which served as the basis for her DFC was one sided and failed to identify any rule or regulation that she purportedly violated. Specifically, she made the following contentions:

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<sup>14</sup> Petitioner cited to 10 U.S.C. § 14311, but this statute refers to reserve officers. Reference (b) is the corresponding statute for the delay of promotions for officers on active duty.

<sup>15</sup> Enclosure (9) suggests that Petitioner had made two submissions to DODIG alleging reprisal actions following her initial submission on in March 2017 (see paragraph 31 above). These submissions were not provided to the Board for review. It further suggests that DODIG informed Petitioner by letter dated 10 December 2018 that her complaints either did not warrant further investigation or were not substantiated.

<sup>16</sup> As new material justifying reconsideration of the Board’s decision in Docket No. 0188-18 in accordance with reference (a), Petitioner noted that she had since been formally removed from the FY 2017 Active-Duty Navy promotion selection list, and she provided a letter from the Director, Information Maneuver Division, dated 16 October 2020, who reportedly observed Petitioner’s performance during the period in question.

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(1) Her removal from the FY 2017 Active-Duty Navy Captain promotion selection list violated references (e) and (f) because the underlying CI was legally deficient, not supported by evidence, and contrary to law.<sup>17</sup> She also contends that her removal from the promotion list violated references (b) and (f) because her promotion was delayed for more than 180 days.

(2) The CI findings were arbitrary and contrary to substantial evidence, as she claimed that the evidence showed that she relieved her SEL only after approval from her operational chain and that the only remaining question was where he would be reassigned.

(3) The DFC was based on incorrect facts and arbitrary legal standards. Specifically, Petitioner contends that her DFC incorrectly states that Petitioner violated Article 92, UCMJ, and that she was in a “quasi-Commanding Officer” role, although the CI did not make this finding, and that she presented evidence that she was not derelict in her duties.

(4) The CI findings are legally defective because they failed to identify any applicable legal standards for relieving a SEL.

(5) The Board “violated its mandate by refusing to correct this injustice” in Docket No. 0188-18.

(6) The denial of Petitioner’s EO complaint was arbitrary and capricious and against the evidence.

See enclosure (1).

cc. By memorandum dated 21 February 2021, PERS-00J reviewed Petitioner’s application and records and provided an AO for the Board’s consideration recommending that Petitioner’s requests be denied. The AO findings were summarized as follows:

(1) Petitioner’s request was untimely finding because the three-year statute of limitations would begin on the date of Petitioner’s DFC.<sup>18</sup>

(2) Petitioner has not met her burden to overcome the presumption of regularity attached to the official actions of the Navy in her contentions, and she does not provide evidence showing a material error or injustice in her contentions.

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<sup>17</sup> Specifically, Petitioner asserted that the CI made “capricious and arbitrary findings that are contrary to law that there was no coordination [for the relief of her SEL] – when the irrefutable evidence shows otherwise”; that the CI failed to identify any legal standards that Petitioner allegedly violated; and that Petitioner would have been derelict in the performance of her duties if she did not coordinate for the reassignment of her SEL, who “repeatedly targeted protected racial and gender minority groups and undermined command authority with [REDACTED].”

<sup>18</sup> The Board disregarded this inaccurate conclusion, as Petitioner’s original application was timely, this application was a request for reconsideration of the Board’s decision on Petitioner’s original application, and the present application included June 2019 Petitioner’s removal from the FY 2017 Active-Duty Navy Captain promotion selection list.

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PERS-00J noted that Petitioner provided no evidence that she has submitted “a supplemental request” to have her rebuttal to the adverse FITREP filed in her naval record, as advised in the decision letter for Docket No. 0188-18.

See enclosure (19).

dd. By letter dated 14 April 2021, Petitioner, through counsel, provided a rebuttal to the PERS-00J AO referenced in paragraph 3cc above for the Board’s consideration. Her rebuttal letter is summarized as follows:

(1) Petitioner’s request for reconsideration is timely because it challenges her removal from the FY 2017 Active-Duty Navy Captain promotion selection list, which occurred in June 2019 and requests reconsideration of Docket No. 0188-18 which was also issued in June 2019. Petitioner also cited to the “substantial illegal delays in the processing of the removal from the active duty Captain permanent promotion list.”

(2) The AO fails to address the evidence that Petitioner presented in support of her petition, namely the real-time emails and calendar meeting agenda entries showing that Petitioner properly coordinated all administrative actions with her chain of command. Petitioner asserts that demonstrates that the AO is not reliable and should not be considered in this case. Petitioner further contends that Docket No. 0188-18 and the AO failed to address the merits and substance of Petitioner’s evidence and arguments.

(3) Petitioner contends that she rebutted the presumption of regularity because the procedures used to remove her from the promotion list were “highly irregular, arbitrary, capricious, and contrary to [reference (b)] and substantial evidence in this case.” Specifically, Petitioner contends that she was removed from the promotion list based on her DFC for misconduct, substandard performance of duty and loss of confidence despite the fact that she was never in command and that her performance was excellent.

(4) The adverse FITREP should be corrected because it was based on “the same incomplete and arbitrary investigation as the removal from the [promotion list].”

(5) Petitioner supplemented her original request for relief to include her restoration to active duty. She also suggested that the entirety of the PERS-00J AO should be set aside since it “misconstrues the specific request for relief” made by the Petitioner.

See enclosure (20).

#### CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found insufficient evidence of any material error or injustice warranting relief. Accordingly, the Board affirmed its previous denial of Petitioner’s request for relief in Docket No. 0188-18.



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The Board found Petitioner's contention that the CI which served as the basis for her DFC and ultimately her removal from the promotion list was arbitrary and contrary to substantial evidence to be without merit. This Board is not an investigative body. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that naval officials properly performed their functions. In this case, there was no reason to believe that the CI IO failed to conduct a thorough and impartial investigation, impartially weighed the conflicting evidence and witness credibility, and reached his conclusions in an impartial manner. Petitioner certainly has not provided any evidence to suggest that the IO had a preexisting bias which would taint his conclusions in this regard. The Board acknowledges that Petitioner provided evidence contrary to the CI findings, but this evidence appears to be outweighed by the mass of evidence against her. The Board has no reason to doubt that the CI IO impartially weighed the evidence for and against Petitioner, to include weighing Petitioner's credibility against that of her multiple accusers. The Board further presumes that the CI which formed the basis for the later adverse actions taken against Petitioner received a proper legal review to ensure that the findings were supported by substantial evidence, that the COMFLTCYBERCOM reviewed the evidence supporting the CI findings before approving them, and that every leader in the chain of command who took action based upon the findings considered both the evidence underlying its findings and Petitioner's rebuttals to the findings. The Board notes that Petitioner has made similar contentions to those made in her present application in response to every proposed adverse action that has been contemplated based upon the results of the CI without avail.

Petitioner's contention that the evidence she provided "irrefutably" demonstrated that she conducted proper coordination prior to relieving her SEL was clearly false. The e-mails that she provided that purportedly reflects her coordination of this decision were dated after the action had been taken and do not reflect prior approval of this decision. Rather, they reflect her efforts to obtain approval (after the fact), and that she took action before such approval was received. The e-mail traffic with the [REDACTED] Military Intelligence Brigade (i.e., the SEL's administrative command) reflected that Petitioner discussed the reasons that she desired to relieve her SEL with a non-commissioned officer (NCO) who clearly did not have the authority to approve the relief of her SEL, and that this NCO clearly informed Petitioner that he needed to discuss the matter with his superiors further. It very obviously did not say what Petitioner claimed it to say. Likewise, the e-mails provided with Petitioner's operational chain reflected only that Petitioner had discussed her desire to remove her SEL, but not that the decision had been approved. In fact, Petitioner's operational chain clearly and unequivocally informed Petitioner that the relief for cause memorandum that her SEL's administrative chain of command would need to be brought into the conversation before her SEL was removed. That clearly did not happen. An officer of Petitioner's experience should know that "coordination" in a matter such as this does not consist only of preliminary discussions without approval. Common sense dictates that an officer without command authority in a joint organization cannot unilaterally relieve a service member from a position to which they were assigned by the other service without first coordinating that decision with the member's command authority. Contrary to Petitioner's contention, that clearly did not happen here, and Petitioner was derelict in purporting to relieve her SEL without such coordination.

A review of the evidence provided by Petitioner reveals that she has repeatedly mischaracterized her SEL's comments by stating that he actually requested to be relieved. Specifically, the 5

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October 2016 e-mail message in question reflected that the SEL objected to Petitioner's assessment of his credibility relative to that of a subordinate service member whose integrity he questioned. The message in question reflects that her SEL was conveying that he should be relieved *IF* his own integrity had been so compromised to be put on par with the other service member. The SEL clearly did not "ask" to be relieved, as Petitioner has stated on multiple occasions, including to this Board, but rather was making the point that he believed Petitioner's questioning of his integrity to be unjustified. This Board makes no conclusion regarding the SEL's integrity, but did believe that Petitioner's obvious and repeated mischaracterization of his words to justify her actions called her own credibility into question.

Petitioner's contention that the CI failed to state any law or regulation violated by Petitioner is clearly false. Dereliction of duty is a violation of Article 92, UCMJ, and the evidence reflects that she was derelict in her duties as the [REDACTED] Chief. Petitioner had a duty to exercise good judgment, leadership, and temperament expected of a senior officer in this position, and she failed to do so. She had a duty to make proper coordination with both the operational command and her SEL's administrative command before relieving him from his Army-assigned position, but she failed to do so. She also had a duty to foster a positive work environment in [REDACTED], but as evidenced by the overwhelming evidence of the CI she failed to do so. There was more than sufficient evidence to find that Petitioner was derelict in her duties as the CSG [REDACTED] Chief in violating Article 92, UCMJ, which certainly constitutes misconduct sufficient to justify her DFC.

The Board found no error in the failure of the IO to identify any legal standard for relieving a SEL. As [REDACTED] is a joint command, no such "legal standard" is likely to exist. As mentioned above, however, common sense dictates that an individual without command authority, like Petitioner, does not have the authority to relieve a service member of the duties assigned to that member by parent service without the approval of that parent service. The relief of an Army NCO is functionally equivalent to the DFC of Navy personnel. At the very least, Petitioner could have looked to the regulations that she was familiar with for guidance since she disregarded the guidance of her operational chain and her own staff.<sup>19</sup> Petitioner's predecessor reportedly understood the proper process according to her statement during the CI. The CI found Petitioner to be derelict in this regard because she failed to exercise the judgment required of a senior officer in her role as the [REDACTED] Chief. This finding was certainly supported by the evidence.

The Board found no merit in Petitioner's contention that she would have been derelict if she had not relieved her SEL for cause. In this regard, the Board makes no conclusions regarding whether the relief was justified. The Board does not doubt that the relationship between Petitioner and her Army SEL was challenging, or that Petitioner's SEL may have been insubordinate and acted contrary to her wishes. Petitioner spends a great deal of effort justifying the decision to relieve her SEL, but that is not the issue. The issue is how she, as a Navy officer without command authority, went about relieving a senior NCO assigned to the joint position by the U.S. Army. As discussed above, the Board found no error in the CI's finding that she failed

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<sup>19</sup> MILPERSMAN 1616-010 reflects that an enlisted member being DFC has a right to comment on the action, and that the DFC must be approved by NPC. Obviously, the process of relieving a senior NCO from a joint position to which he was assigned by Army authorities would be more complicated.





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to properly coordinate this action. Petitioner very well may have been justified in seeking her SEL's removal from the organization, but she demonstrated extraordinarily poor judgment in how she went about executing this action.

The Board found Petitioner's contention that her DFC violated reference (c) to be without merit. First, as discussed above, the CI upon which the DFC was based found clear evidence of misconduct upon which the DFC could be based. Paragraph 3a of reference (c) states that "[a]ny act of misconduct, civil or military, may form the basis for a DFC request." Petitioner's substantiated dereliction of duty in violation of Article 92, UCMJ, satisfied this requirement. Further, Petitioner's contention that her DFC violated reference (c) because the command failed to take disciplinary action against her was false because she received a non-punitive letter of censure for her conduct prior to initiation of the DFC process. The Board also noted that the DFC request commented that Petitioner's DFC was necessitated by the circumstances of her status as a senior officer who had been removed from her position by the operational chain of command located in a remote location without reassignment options. Next, Petitioner's contention that there was no basis to DFC Petitioner for substandard performance of duty because her conduct did not rise to the level of "gross negligence," as required by reference (c), is also without merit. Petitioner relied upon the definition of "gross negligence" from tort law to support her contention that her negligence did not rise to this level (see enclosure (8)), which is entirely inapplicable to this situation. Whether Petitioner's negligence arose to this level is a judgment call, and the Board finds no error in the conclusion that an officer with Petitioner's experience demonstrated "gross negligence" in the conduct in question. Petitioner's contention that her demonstrated excellent performance in her role as [REDACTED] Chief disproved the finding that she demonstrated "substandard performance of duty" is also without merit. Applying the definition from SECNAVINST 1920.6 by analogy, "substandard performance of duty" is defined as the "[i]nability of an officer to maintain adequate levels of performance or conduct" as evidenced by one or more of a specified list of examples which include the "[f]ailure to demonstrate acceptable qualities of leadership required of an officer in the member's grade" and "[f]ailure to properly discharge duties expected of officers of the member's grade and experience." Petitioner's substantiated conduct certainly met this criteria. Further, the determination of her operational chain that they lost confidence in her ability to perform the functions of the [REDACTED] Chief strongly suggests that her leadership failings outweighed whatever positive contributions that she was making to the command. Finally, the Board agrees with Petitioner's contention that "loss of confidence" should not have been included as basis for the DFC since Petitioner was not in a command billet, but does not believe that this mistake warrants relief. This was but one of the three bases cited in support of the DFC request and the other two bases provided more than sufficient bases to support the request, so the inclusion of this basis in the DFC request was clearly a harmless error. Accordingly, the Board found no material error or injustice in Petitioner's DFC.

Having found no material error or injustice in either the DFC or the CI upon which it was based, the Board also found no error or injustice in Petitioner's adverse FITREP for the reporting period 26 July 2017 to 30 April 2017. The Board notes that reference (d) requires the issuance of a FITREP upon detachment of a member, and reference (g) provides that "[s]ubstantiated, adjudicated officer misconduct or substandard performance should be documented in a [FITREP] per reference (d)." The content of the subject FITREP was supported by the

[REDACTED]

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substantiated findings of the CI, and Petitioner was afforded the opportunity to provide a statement to rebut the adverse material. Accordingly, the Board found no error or injustice in Petitioner's adverse FITREP.

Finally, the Board found Petitioner's contention that she should be restored to the FY 2017 Active-Duty Navy Captain promotion list because her removal from the said list violated references (e) and (f) to be without merit. First, as discussed above, the Board found no error in the underlying investigation upon which Petitioner's ultimate removal from the promotion list was based. Further, Petitioner has been afforded the opportunity to rebut the findings of the CI at every step of the process, so she was afforded all due process in this decision. The Board acknowledged that Petitioner's promotion was delayed beyond the six months authorized by reference (b), but notes that reference (b) permits the SECNAV to specify a further period of delay. Considering that it was the SECNAV who ultimately determined that Petitioner should be removed from the promotion list, the approval of this further period of delay can reasonably be implied. The Board also acknowledges that Petitioner's promotion was delayed beyond the 18 months authorized by reference (b), but determined that the remedy for an excessive promotion delay is not the automatic promotion of an officer deemed otherwise not qualified for the delayed promotion. Petitioner's case involved review by various agencies throughout the chain of command, and required that she be provided the opportunity to submit evidence and/or statements. Additionally, Petitioner submitted multiple IG complaints and an EO complaint after the original DFC request. The findings for the former were not available until December 2018, while the initial findings for the latter as they pertained to the four named individuals in Petitioner's operational chain, was not resolved until February 2019. The results of these investigations theoretically could have been relevant to the determination of Petitioner's promotion status, so it was not unreasonable to delay adjudication of Petitioner's promotion status while the multiple investigations initiated on her behalf were conducted. The Board determined that the delay in resolving Petitioner's promotion status did not cause Petitioner any harm. Rather, it ensured that the SECNAV decision to remove Petitioner from the promotion list was properly informed by all of the relevant facts. Accordingly, the Board finds no material error or injustice in this delay.

Regarding Petitioner's contention that the denial of Petitioner's EO complaint was arbitrary and capricious and against the evidence, the Board notes that EO appeals are outside of its purview. However, it also notes that Petitioner provided no evidence to support her contention that any of the adverse actions taken against her were motivated by racial and/or gender bias.

#### RECOMMENDATION:

In view of the above, the Board recommends 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.

[REDACTED]

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5. The foregoing action of the Board is submitted for your review and action.

1/28//2022

[REDACTED]

Executive Director

SECRETARY OF THE NAVY DECISION:

FEB 10 2022

Board Recommendation Approved (Deny Relief) [REDACTED]

Petitioner's Request Approved (Full Relief – Petitioner is to be restored to active duty and her record corrected to reflect that she was never removed from the FY 2017 Active-Duty Navy Captain promotion selection list and continuous active duty service. Upon her restoration to active duty, Petitioner will be promoted to Captain pursuant to her selection by the FY 2017 Active-Duty Navy Captain PSB, with the date of rank that she would have had but for her promotion delay. Petitioner's record will also be corrected by removing the adverse FITREP, and all references to her DFC.)

[REDACTED]

Secretary of the Navy