



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

█
Docket No: 1568-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █ USN,
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Ref: (a) Title 10 U.S.C. § 1552
(b) BUPERSINST 1610.10D

Encl: (1) DD Form 149 w/attachments
(2) Fitness Report and Counseling Record 1 Nov 16 to 31 Oct 17
(3) Fitness Report and Counseling Record 1 Nov 17 to 8 Jun 18
(4) Office of Legal Counsel (PERS-00J) Advisory Opinion of 14 Oct 21
(5) Petitioner's rebuttal of 3 Nov 21

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her naval record be corrected by modifying fitness report and counseling records covering the periods 1 November 2016 to 31 October 2017 and 1 November 2017 to 8 June 2018 and convening a special selection board (SSB) for each year she was passed over for promotion to Commander (O-5).

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 23 November 2021. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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, with the exception of her SSB request.

b. Petitioner reported to █ on 10 June 2015 and served as Department Head, Utilization Management. She was awarded Navy Medicine's Clinical Social Work Officer of the Year for █ as "a testament to her outstanding clinical expertise, strong organizational skills, impressive leadership, and mentoring ability." On 26 June 2017, Petitioner purportedly received verbal counseling from the DHB regarding Petitioner's

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lack of military bearing, leadership, and professionalism. On 29 June 2017, Petitioner filed an Inspector General (IG) complaint and reported concerns involving her supervisor, the Director for the Directorate of Healthcare Business (DHB). Three additional officers filed complaints with the IG with respect to leadership against the Director, DHB. In response to the complaints, in August 2017, the Commanding Officer (CO), ██████████ ordered a preliminary inquiry (PI) into the allegations. In his 5 October 2017 Report of Investigation, the Investigating Officer (IO) opined that Director, DHB, did not commit a Health Insurance Portability and Accountability Act (HIPPA) or Equal Opportunity (EO) violation, and there was no evidence of collusion to submit IG complaints against the Director, DHB, in order to “sack the DHB.” However, the IO opined that trust in the Director, DHB, was the principle issue, and that the Director, DHB, has not taken ownership of the failures and problems in her directorate. The IO recommended the Director, DHB, either be relieved of her duties due to a loss of confidence of most of her subordinates, or that she remain in place, which would require “[a] lot of energy and time and expertise . . . to improve morale.” The CO, ██████████ determined that the Director, DHB’s actions did not rise to a level warranting punitive action.

During the course of the PI into the four IG complaints submitted regarding the Director, DHB, allegations arose regarding Petitioner’s conduct. Subsequently, on 11 October 2017, the CO, USNH ██████████, ordered a PI into allegations made against Petitioner concerning disrespect and insubordination. In his 30 October 2017 Report of Investigation, the PI IO opined that Petitioner no longer called colleagues by their first names after being warned not to in professional settings, Petitioner did not yell at a civilian colleague, but there was a strain between them due to “different work styles.” The IO also opined that the allegations of Petitioner’s disrespect to a superior commissioned officer were substantiated, that she continued her pattern of disrespectful and passive aggressive e-mails that reveal an attitude that is indifferent and insolent toward the Director, ██████████ Lastly, the IO opined that Petitioner inappropriately spoke on behalf of a superior commissioned officer without permission to do so. The PI IO recommended Petitioner receive, in part, a Non-Punitive Letter of Caution (NPLOC) or Letter of Instruction (LOI) due to “a pattern of disrespect towards [the Director, ██████████].”

On 31 October 2017, the CO, ██████████ issued Petitioner a LOI “to discuss specific measures required to improve [Petitioner’s] unsatisfactory performance . . .” Petitioner was also issued enclosure (2), a Periodic/Regular fitness report for the reporting period 1 November 2016 to 31 October 2017, and was later awarded a Navy Achievement Medal (NAM) instead of the Navy Commendation Medal (NCM) she expected, and enclosure (3), a Detachment of Individual/Regular fitness report for the reporting period 1 November 2017 to 8 June 2018.

c. On 25 October 2017, Petitioner filed a complaint to the Navy IG (NAVINSGEN) against her CO alleging that previous complaints resulted in reprisal action against her by her command, and that her CO took no action to assist against the abuse/marginalization of her and many of her peers by a direct supervisor. The part of the complaint pertaining to reprisal was retained by the NAVINSGEN as a matter under its cognizance. The complaint against her CO was referred to Navy Medicine East (NME) for investigation as a command matter. The NME convened an investigation on 13 November 2017. The NME determined that Petitioner’s CO conducted an adequate investigation into complaints against the direct supervisor and took appropriate action based on his investigation, and the allegations made against her CO were unsubstantiated. On 11

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March 2019, the Bureau of Medicine and Surgery IG (BUMED IG) did not substantiate Petitioner's allegations of reprisal and recommended case closure. On 7 August 2019, the Department of Defense IG ((DoD IG) concurred with BUMED IG and did not substantiate Petitioner's allegations of reprisal.

d. In her application at enclosure (1), Petitioner, with counsel, contends that she was unjustly issued a LOI based on claims made by her supervisor during an investigation that was initiated after Petitioner filed a complaint against the same supervisor. Petitioner also asserts that her leadership crafted a false narrative to justify the issuance of the LOI, by characterizing a scheduled "career developing" session as a counseling to address insubordination by Petitioner. Petitioner also asserts that she received unjust adverse remarks and ratings in two fitness reports, enclosures (2) and (3), a downgraded end of tour award; a NAM vice a NCM (originally submitted as a Meritorious Service Medal, but an awards board recommended a NCM). Petitioner argues that these fitness reports resulted in her being twice passed for promotion to CDR (O-5) and that they should be modified in order to correct the injustice.

Petitioner specifically notes her demonstrated excellence that led to her selection as the United States Navy Medicine's Clinical Social Worker of the Year in ██████████ an excellent mid-year review just prior to the beginning of the retaliation by her supervision (including a recommendation for an award), and then her immediate return to excellence in 2018 after reassignment from the toxic leadership she endured between 2017-2018. Petitioner also alleges that the IG investigation was hastily completed, lacked thoroughness, ignored multiple relevant witnesses and evidence, and it entirely ignored the causal connection that showed her supervisor took multiple adverse actions against Petitioner after acknowledging she was aware that an IG complaint had been made against her by Petitioner.

Petitioner furnished multiple character reference letters; many of them from first-hand witnesses who support her allegations of reprisal, to include a CDR who served in the IG role for ██████████ ██████████. After this CDR turned over his IG duties, he filed an anonymous IG complaint on the DoD IG site so that "a separate and unbiased professional could be appointed and empowered to conduct a more thorough review of the situation."

e. Enclosure (4), the PERS-00J AO, recommended denying Petitioner's request to modify the fitness reports, stating that there was insufficient evidence to show that Petitioner's senior leadership retaliated against her for filing the complaints. The AO found that the command properly issued Petitioner a LOI. The AO also found that her contested fitness reports were not unfavorable, were submitted in compliance with reference (b), and that Petitioner does not meet the requirements for a SSB.

f. Petitioner, with counsel, submitted enclosure (5), a rebuttal to the AO, noting that the PERS-00J opinion was "based upon the inaccurate, and unsupported conclusory recommendation provided without referring to a single fact" and that the AO "fails to address or even acknowledge the existence of key evidence." The rebuttal specifically refers to the former IG CDR who felt compelled to file an anonymous IG complaint alleging the Petitioner was retaliated against; the contemporaneous memorialization of a conversation she had with her CO, in which he purportedly admitted he intended to marginalize her fitness reports to keep her from

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promoting to CDR; the other officers who also filed complaints against Petitioner's supervisor, the contradiction in Petitioner's supervisor's actions before and after Petitioner filed the complaint; the lack of an independent investigator for the PI into allegations made against Petitioner by her supervisor, which was based on the initial IG complaint against that supervisor; and the improper interference by her CO with the Awards Board.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants partial relief. The Board noted that Petitioner received an excellent mid-year review in April 2017 from the same RS who later gave her verbal counseling in June 2017, after the RS became aware of IG complaints filed against her by the Petitioner. The Board further noted that prior to the two contested fitness reports, she received "Early Promote" recommendations and high marks, and that after she transferred from the [REDACTED] she again received "Early Promote" and "Must Promote" recommendations and high marks on her fitness reports. In addition, the Board took into account the multiple letters from officers who worked with Petitioner at the [REDACTED] who supported Petitioner's account of senior leadership and opined that Petitioner was the subject of command reprisal. The Board determined that, although reprisal against Petitioner was unsubstantiated, there was sufficient evidence to establish the existence of injustice in the Petitioner's record.

The Board thus concluded that Petitioner's record shall be corrected by modifying her fitness report for the reporting period 1 November 2016 to 31 October 2017 by marking the leadership trait from a '4' to a '5' and modifying her contested fitness report for the reporting period 1 November 2017 to 8 June 2018 by marking the leadership trait from a '3' to a '5'.

The Board noted that Petitioner has not exhausted all administrative remedies regarding her request to convene a SSB and thus concluded that Petitioner must first petition the Navy Personnel Command.

RECOMMENDATION

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

Petitioner's naval record be corrected by modifying enclosure (2), fitness report for the reporting period 1 November 2016 to 31 October 2017, to reflect her Leadership performance trait in Block 38 as "5.0" vice "4.0."

Petitioner's naval record be corrected by modifying enclosure (3), fitness report for the reporting period 1 November 2017 to 8 June 2018, to reflect her Leadership performance trait in Block 38 as "5.0" vice "3.0."

No further action will be taken to Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was

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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.

12/27//2021

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Advisory Opinion Recommendation (Deny Relief)

Reviewed and Approved Board Recommendation (Partial Relief)

Reviewed and Approved Petitioner's Request (Grant Relief)

1/14/2022

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]