



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

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Docket No. 0030-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █, USMC,  
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Ref: (a) 10 U.S.C. § 1552  
(b) 10 U.S.C. § 5947  
(c) SECNAVINST 1420.3, Department of the Navy Commissioned Officer Promotion Program, 28 March 2019  
(d) MCO P1070.12K w/ CH 1, Marine Corps Individual Records Administrative Manual (Short Title: IRAM), 14 July 2000

Encl: (1) DD Form 149 w/enclosures and additional information of 23 Mar 22  
(2) ALNAV Msg 085/18, subj: FY-20 U.S. Marine Corps Major Selections, dtg 191430Z Dec 18  
(3) CMC Action Memo, subj: Promotion Recommendation in the Case of [Petitioner], 25 February 2021  
(4) █ Marine Division CG Memo 1920 SJA, subj: Report of No Misconduct in the case of [Petitioner], 12 August 2020  
(5) █ Marine Expeditionary Force Memo 1920 SJA, subj: Report of the Board of Inquiry in the case of [Petitioner], 12 February 2020  
(6) DC (M&RA) Memo 1920 JPL, subj: Termination of Administrative Proceedings in case of [Petitioner], 16 April 2020  
(7) █ Marine Regiment, █ Marine Division Memo 5800 CO, subj: Response to CODN N&C LTR ICO [Petitioner] (First Endorsement), 13 May 2020  
(8) █ Marine Division Memo 1420 SJA, subj: Response to █ N&C LTR ICO [Petitioner] (Second Endorsement), 26 June 2020  
(9) █ Marine Expeditionary Force Memo 1420 SJA, subj: Response to █ N&C LTR ICO [Petitioner] (Third Endorsement), 10 July 2020  
(10) HQMC Memo 1400 MMRP-1, subj: Promotion Recommendation in the case of [Petitioner] 23 March 2021  
(11) Petitioner's E-mail, subj: [Petitioner]\_Docket NR20220000030 Additional Documentation, sent Wednesday, March 23, 2022 @ 1:39:36 PM

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 removal of adverse material from his naval record and reconsideration of his original promotion date of 1 July 2019.

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[REDACTED]

2. The Board reviewed Petitioner's allegations of error or injustice on 19 May 2022 and, pursuant to its regulations, determined that no corrective action should be taken on Petitioner's naval record. 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 evidence of record pertaining to Petitioner's allegations of error or injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 19 December 2018, the results of the Fiscal Year 2020 (FY20) U.S. Marine Corps (USMC) Major Promotion Selection Board (PSB) were announced. Petitioner was among the officers who were selected for promotion. See enclosure (2).

c. On 28 December 2018, Petitioner used his Government Travel Charge Card (GTCC) at an establishment listed as [REDACTED] in [REDACTED], while on deployment. The [REDACTED] was believed by another officer interviewed during the subsequent command investigation (CI) to be a brothel, but Petitioner asserted that it was a strip club. See enclosure (3).

d. Approximately one week later, Petitioner used his GTCC at the same establishment. See enclosure (3).

e. Petitioner was assigned a promotion date of 1 July 2019, but his promotion was delayed pending review of the adverse information against him. See enclosure (3).

f. The subsequent CI substantiated allegations of misconduct against Petitioner, but by memorandum dated 12 August 2019 the CI's appointing authority disapproved the findings and recommendation of the CI based upon "numerous examples of the investigating officer's bias" in the investigation. The appointing authority acknowledged that Petitioner demonstrated errors in judgment, in that he went to a gentlemen's club in [REDACTED] while on official travel and chose to use his GTCC when he felt it was his only option to make payments,<sup>1</sup> but found that these actions did not constitute misconduct. See enclosure (4).

g. Despite the decision of the CI appointing authority to unsubstantiate the allegations against Petitioner, on 6 November 2019 the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) required Petitioner to show cause for retention on active duty, due to

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<sup>1</sup> According to enclosure (5), Petitioner asserted that his personal credit card was not accepted at the establishment during his team's visit to the strip club, so he was left with the option of using his GTCC or departing the establishment without paying his bill and elected the former. He further asserted that he visited the same establishment by himself a few weeks later, confident that his personal credit card would work on this occasion, but was faced with the same dilemma when it did not.

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substandard performance of duty<sup>2</sup> and misconduct and moral or professional dereliction.<sup>3</sup> See enclosures (3) and (5).

h. A Board of Inquiry (BOI) convened on 27 January 2020 to review Petitioner's case. The majority of the BOI members found that none of the alleged bases for separation were substantiated by the preponderance of the evidence, and recommended that the show cause proceedings against Petitioner be closed.<sup>4</sup> See enclosure (5).

i. By memorandum dated 16 April 2020, the DC (M&RA) directed that the show cause proceedings against Petitioner be closed. See enclosure (6).

j. By letter dated 12 May 2020, Petitioner requested that his promotion status be restored in light of the BOI findings and the DC (M&RA)'s action in his case. See enclosure (7).

k. By memorandum dated 13 May 2020, Petitioner's regimental commander recommended that Petitioner's promotion be allowed to proceed and that he be allowed to continue his career in the Marine Corps. See enclosure (7).

l. By memorandum dated 26 June 2020, the 2d Marine Division Commanding General (CG) endorsed the recommendation of Petitioner's regimental commander, commenting that Petitioner has demonstrated himself to be a trusted officer and leader and noting that the BOI had unsubstantiated every basis for separation.<sup>5</sup> See enclosure (8).

m. Despite the favorable recommendations of the lower members of the chain of command, by memorandum dated 10 July 2020 the [REDACTED] Marine Expeditionary Force CG recommended that Petitioner not be promoted to major. He provided no explanation for this recommendation. See enclosure (9).

n. By memorandum dated 25 February 2021, the Commandant of the Marine Corps (CMC) recommended to the Secretary of the Navy (SECNAV) that Petitioner's name be removed from the FY20 USMC Major promotion list. In making this recommendation, the CMC commented that, taking Petitioner's explanation for his conduct as true, his actions "demonstrate remarkably poor judgment" and that his conduct was "a significant departure from that expected of a naval

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<sup>2</sup> The specific bases of substandard performance of duty for which the DC (M&RA) directed Petitioner to show cause for retention were failure to demonstrate acceptable qualities of leadership required of an officer of his grade; failure to properly discharge the duties expected of an officer of his grade and experience; and failure to conform to prescribed standards of dress, weight, personal appearance, or military deportment.

<sup>3</sup> The specific basis of misconduct and moral or professional dereliction for which the DC (M&RA) directed Petitioner to show cause for retention were commission of military or civilian offenses which could be punished by confinement of six months or more and any other misconduct which would require specific intent for conviction. Specifically, he cited alleged violations of Article 92 (Failure to Obey an Order or Regulation), Article 131b (Obstructing Justice), and Article 133 (Conduct Unbecoming an Officer and Gentleman), Uniform Code of Military Justice (UCMJ).

<sup>4</sup> The minority member of the BOI found sufficient evidence to substantiate the alleged bases for separation, but joined the majority in recommending that Petitioner nonetheless be retained in the Marine Corps.

<sup>5</sup> This officer was also the appointing authority who disapproved the findings of the CI, and thus unsubstantiated the allegations against Petitioner (see paragraph 3f above).

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[REDACTED]

officer and falls far below the statutory exemplary conduct requirements” despite the findings of the BOI. He also noted that the [REDACTED] Marine Division CG had commented in Enclosure (4) that Petitioner “obviously had errors in judgement [sic]” and that the law requires all officers to show themselves as a good example of virtue, honor, patriotism, and subordination. See enclosure (3).

o. By signature dated 11 March 2021, the SECNAV approved the CMC’s recommendation and directed the removal of Petitioner’s name from the FY20 USMC Major promotion list. See enclosure (3).

p. By memorandum dated 23 March 2021, Petitioner was notified of the SECNAV’s decision, and informed that enclosures (3) and (10) would be forwarded for inclusion in Petitioner’s naval record in accordance with reference (d). See enclosure (10).

q. Petitioner was subsequently passed over for promotion by the Fiscal Year 2023 (FY23) USMC Major PSB. Along with the SECNAV’s removal of his name from the FY20 USMC Major promotion list, this constituted Petitioner’s second failure of selection (FOS) for promotion. See enclosure (1). Based upon his second FOS for promotion, Petitioner was assigned an end of active service date of 1 June 2022. See enclosure (11).

r. Petitioner contends that his promotion status was unfairly considered by the SECNAV. He further contends that he was not afforded the opportunity to submit a rebuttal to enclosures (3) and (10) prior the convening of the FY23 USMC Major PSB because these documents were not considered to be “adverse.” Petitioner asserts that enclosure (10) alone was adverse in nature, and there is no other documentation of his conduct in his record. Finally, Petitioner notes that the SECNAV’s signature on enclosure (3) is dated 11 March 2021, which would appear to the PSB to be an assessment of his potential to serve as a Major as of that date, rather than on the date of his previous selection for promotion in December 2018. See enclosure (1).

s. After Petitioner submitted enclosure (1), he received a memorandum from the DC (M&RA) informing him that his potential to serve in the USMC Reserve (USMCR) was not favorably endorsed, and therefore his request for appointment in the USMCR was denied. See enclosure (12).

t. By e-mail dated 23 March 2022, Petitioner supplemented his request for relief with enclosure (11). He noted that it was the DC (M&RA) who original closed the show cause action against him with no further administrative action and no adverse material to be entered into his naval record (see paragraph 3i above), but that he was not determined not to be qualified to continue service in the USMCR due to the inclusion of enclosure (3) in his record explaining his first FOS. He offered that this decision supports his claim of injustice in that he was denied the opportunity to continue serving in the USMCR despite the fact that the allegations against him were unsubstantiated and closed with no adverse administrative action. See enclosure (11).

#### 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.

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The Board found no error or injustice in the removal of Petitioner's name from the FY20 USMC Major promotion list. In accordance with reference (c), the promotion of any officer who is the subject of an investigation to determine whether disciplinary action of any kind should be taken, is pending a show cause BOI, or if there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in reference (b) or to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion, may be delayed. The purpose for such a delay is to ensure that the SECNAV recommends or permits the promotion of only those officers who are fully qualified for promotion and meet the exemplary conduct requirement of reference (b). When the reason for delay is resolved, the promotion action is to be forwarded to the SECNAV for a final decision. In accordance with paragraph 5e of enclosure (8) to reference (c), upon receipt of the individual after delay promotion action, the SECNAV may either support the officer's promotion by terminating the delay or remove the officer's name from the promotion list.<sup>6</sup> Petitioner was provided, and availed himself, of the opportunity to persuade the SECNAV's decision in this regard. The SECNAV's ultimate decision to remove Petitioner from the promotion list was fully supported by the evidence. The SECNAV was not bound by the findings of the BOI which unsubstantiated the alleged misconduct with regard to his promotion list removal decision. Further, the SECNAV's decision was not based upon the alleged misconduct, but rather upon the "remarkably poor judgment" that Petitioner's admitted conduct revealed. The Board agrees that Petitioner's conduct did, in fact, reflect remarkably poor judgment, regardless of whether they constituted offenses under the UCMJ, which reasonably called into question his qualifications to serve as a field grade officer in the Marine Corps. Accordingly, the Board found no error or injustice in the SECNAV's decision.

The Board also found no error or injustice in the inclusion of enclosures (3) and (10) in Petitioner's naval record. In accordance with reference (d), the decision to remove an officer from a promotion list is among the documents to be filed in the commendatory/derogatory file of a Marine's official military personnel file. There is no evidence that Petitioner was deprived of the opportunity to explain the circumstances of the removal action to the President of the FY23 USMC Major PSB before that board convened.

Finally, although Petitioner did not specifically request relief in this regard, the Board disagreed with his contention that the denial of his request for continued service in the USMCR evidenced the injustice of his removal from the FY20 USMC Major promotion list. As discussed above, the Board found no injustice in the removal of Petitioner from the promotion list, as his admitted conduct clearly demonstrated judgment inconsistent with that required of a field grade officer. Again, the findings of the BOI regarding the specific allegations of misconduct are irrelevant in this regard.

#### RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on Petitioner's naval record.

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<sup>6</sup> The SECNAV's authority to remove an officer from the promotion list is derived from 10 U.S.C. § 629.

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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.

7/21/2022



SECRETARY OF THE NAVY DECISION:

AUG 04 2022

Board Recommendation Approved (Deny Relief) *col*

Petitioner's Request Approved (Full Relief – I believe that the decision to remove Petitioner from the FY20 USMC Major promotion list was unjust given that the BOI unsubstantiated the allegations of misconduct against Petitioner. Accordingly, I direct that Petitioner's naval record be corrected to reflect that he was not removed from the promotion list and that the SECNAV supported his promotion by terminating the delay on 11 March 2021, and that he was subsequently promoted with a date of rank of 1 July 2019. Assuming that Petitioner has since been discharged from the Marine Corps due to his subsequent FOS for promotion, he is to be afforded the opportunity for reinstatement in the grade of major with a date of rank of 1 July 2019, and his record further corrected to reflect uninterrupted service.)

