



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

█
Docket No: 917-22
Ref: Signature Date

█
█
█
█

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

7/13/2022

█

Deputy Director

Signed by: █

Enclosure:



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

██████████
Docket No. 917-22
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) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 w/ enclosures
(2) NCIS Letter, 5720 2019-002569 SER00JF/19U0031, 22 January 2019
(3) BCNR Memo JDR Docket No: 5623-20, subj: Review of Naval Record of [Petitioner], 10 May 2021
(4) NCIS Report of Investigation (Interim), Control No. 11MAY19-MEDJ-0081-8SNA/T, 20 March 2019

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 reconsideration of the Board's previous denial of his request for relief in Docket No. 5623-20.¹ The Acting Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) denied Petitioner's previous request for relief pursuant to the recommendation of the Board in Docket No. 5623-20 on 8 June 2021. The basis for Petitioner's current reconsideration request is his contention that the Board's previous decision relied upon the false premise that Petitioner's alleged misconduct was investigated and/or substantiated by the Naval Criminal Investigative Service (NCIS).

2. The Board reconsidered its decision in Docket No. 5623-20 pursuant to Petitioner's request on 29 April 2022 and, pursuant to its regulations, determined that no corrective action is warranted. Documentary material considered by the Board consisted of the enclosures; the decision memorandum and case file for Docket No. 5623-20, which included all relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies. This decision should be read in conjunction with the decision memorandum for Docket No. 5623-20.

¹ In Docket No. 5623-20, Petitioner requested the removal of all derogatory information from his record, to include his fitness report (FITREP) for the period 1 May 2018 to 9 July 2018; the Detachment for Cause, dated 31 July 2018; and a letter of instruction, dated 31 July 2018, along with all subsequent and related endorsements of these actions. He further requested that his naval record be corrected by assigning him the additional qualifying designation of QF1, effective 31 October 2018; that a special selection board (SSB) be convened to consider him for promotion to Captain; and that his name be added to ALNAV 030/19 if he is selected by the SSB with a date of rank of 10 April 2019 subsequent to confirmation.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,
XXX-XX [REDACTED]

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. As discussed in the decision memorandum for Docket No. 5623-20, Petitioner has not exhausted his administrative remedies with regard to the reprisal allegations that he raised in Enclosures (3) and (4) of that case, or with regard to his FITREP for the period 1 May 2020 to 21 August 2021. Accordingly, the Board did not consider these actions. Besides these actions, Petitioner has exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner's personal appearance, with or without counsel, would not materially add to the Board's understanding of the issues involved. Accordingly, the Board determined that a personal appearance was not necessary and considered Petitioner's case based on the evidence of record.

c. The factual findings in the decision memorandum for Docket No. 5623-20 are adopted and incorporated by reference herein.

d. By letter dated 22 January 2019,² the NCIS informed Petitioner's counsel that a search of the Defense Central Index of Investigations found no evidence of an investigation related to allegations of sexual harassment against Petitioner.³ See enclosure (2).

e. By memorandum dated 8 June 2021, the Acting ASN (M&RA) approved the recommendation of the Board in Docket No. 5623-20, denying Petitioner's request for relief. In paragraph 3i of the decision memorandum for Docket No. 5623-20, the Board found that "[a]n investigation was also initiated by the [NCIS], which on 21 June 2018 corroborated the findings of [a command investigation which substantiated allegations that Petitioner had engaged in a pattern of sexually harassing behavior toward three female junior officers under his command from June 2017 to May 2018]."⁴ See enclosure (3).

f. Petitioner contends that relief is warranted "[i]n light of continuing false claims that NCIS substantiated sexual harassment against [Petitioner]." Specifically, he asserts that the Board's recommendation in Docket No. 5623-20 was "based on the blatantly false premise that the [NCIS] in 2018 substantiated sexual harassment against [Petitioner]," and that "[t]he fabricated claims of a NCIS investigation into allegations against [Petitioner] that never happened permeate the [decision memorandum for Docket No. 5623-20]." He further asserts that the Board is obligated to grant full relief in accordance with reference (b). See enclosure (1).

² This letter is dated 22 January 2019, but purports to respond to a request dated 31 December 2019. The Board presumes the date of the letter to be a scrivener's error.

³ This letter did note that Petitioner was interviewed for a 2018 NCIS investigation, but that investigation was exempt from disclosure because the investigation was still pending. The Board presumes that this is a reference to the investigation of allegations of sexual assault made against Petitioner's command master chief (CMC), which produced significant evidence of sexually harassing behavior by Petitioner. See enclosure (4).

⁴ Specifically, the command investigation had found that Petitioner's behavior included inappropriate comments, gestures, and blocking motions. It also found that Petitioner kissed a female junior officer on the cheek without her consent.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,
XXX-XX [REDACTED]

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board continues to find no error or injustice warranting relief.

Petitioner's contention that the Board's decision in Docket No. 5623-20 relied upon the false premise that NCIS investigated or substantiated allegations of sexual harassment against him is entirely without merit. In fact, there was only one statement in the 18-page decision memorandum for Docket No. 5623-20 which suggested that NCIS had substantiated allegations against Petitioner, and the suggestion that the Board decision relied upon either the assumption of substantiated NCIS findings or that Petitioner was the subject of an NCIS investigation is simply not accurate.

The only relevance of any NCIS investigation to Petitioner's case was that the statements collected by NCIS during the course of its investigation of the allegation of sexual assault against Petitioner's CMC corroborated the findings of the command investigation which had already substantiated allegations of sexual harassment against Petitioner. Petitioner's commander relied in part upon the evidence gathered by this investigation in justifying his request for Petitioner's detachment for cause (DFC).⁵ Regardless of whether Petitioner was the titled subject of the NCIS investigation, the evidence gathered by NCIS did corroborate the substantiated sexual harassment allegations against Petitioner. Enclosure (4) reveals that one of the alleged victims of sexual harassment reported to NCIS on 12 May 2018 that Petitioner "frequently makes 'creepy comments' to her" and provided examples. It further revealed that this alleged victim described Petitioner as a "forceful hugger" and stated that Petitioner "was always hugging her." Another alleged victim reported to NCIS on 8 June 2018 that Petitioner commented on her appearance, hugged and kissed her upon her arrival in Kenya, and repeatedly made inappropriate comments of a sexual nature to her. This officer commented that Petitioner "has lost all awareness of appropriate limits." These statements suggested that there was a general perception that Petitioner routinely tolerated sexually harassing conduct toward junior female officers by his CMC, and that Petitioner's own conduct made some junior female officers uncomfortable. The Board's previous findings in Docket No. 5623-20 relied neither upon the assumption that Petitioner was the subject of this NCIS investigation nor upon the premise that NCIS substantiated allegations of sexual harassment against Petitioner. The evidence gathered by NCIS did, however, support that decision and the adverse actions taken against Petitioner.

The Board acknowledges that the decision memorandum for Docket No. 5623-20 did, in one location, overstate the nature of the NCIS investigative findings.⁶ The NCIS investigation obviously did not substantiate allegations of sexually harassing behavior against Petitioner, but

⁵ Petitioner's commander explained in his request for Petitioner's DFC that "the statements that [Petitioner] made to ... the [NCIS] indicate that he believes his behavior was acceptable. Based on the available evidence, I am firmly convinced that [Petitioner] lacks the self-awareness and situational awareness required of Commanding Officers and leaders in the U.S. Navy. He has grossly failed to uphold the standard required of all Sailors while in a position of special trust, confidence, and authority."

⁶ In the last paragraph on page 12 of the decision memorandum for Docket No. 5623-20, the Board stated: "Two investigations were subsequently initiated into the allegations, one by the command and one by law enforcement, and both investigations substantiated allegations of sexually harassing behavior against Petitioner."

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,
XXX-XX [REDACTED]

the investigation of the sexual assault allegation against Petitioner's CMC did produce convincing evidence to corroborate the allegations of sexual harassment that had already been substantiated against Petitioner in the command investigation. This sentence merely recounted the facts which supported the decision of Petitioner's commander to request DFC, which as noted above was supported in part by the evidence gathered by NCIS. This misstatement in Docket No. 5623-20 was unintentional, but it was unquestionably harmless. None of the other references to the NCIS investigation in the decision memorandum for Docket No. 5623-20, of which there were five in an 18-page document, misstated the nature of the NCIS investigation relative to Petitioner. The assertion that NCIS substantiated allegations against Petitioner "permeate" the decision memorandum for Docket No. 5623-20, as Petitioner contends, is simply false.

The Board found no relevance to Petitioner's contention that a 19 July 2021 letter from the [REDACTED] to Petitioner's congressional representative was false, as a letter written in July 2021 could not affect a DFC decision made in July 2018. The Board also found nothing false or misleading about the portions of this letter objected to by Petitioner.

As it did in Docket No. 5623-20, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). This included consideration of those provisions of paragraph 6 in reference (b) to which Petitioner's cited.⁷ Nothing has changed in this regard. The Board continues to recognize Petitioner's mostly meritorious service in the Navy. That meritorious service was also recognized by the Board of Inquiry, which recommended that Petitioner be retained in the Navy despite its unanimous finding that Petitioner demonstrated substandard performance based upon his failure to conform to prescribed standards of military deportment. Given the totality of the circumstances, the Board believes that Petitioner's retention in the Navy was appropriate despite his clearly substandard performance. However, there simply was no injustice in Petitioner's DFC from command of [REDACTED] for conduct which clearly disqualified him from continued service in that position. Petitioner's subsequent non-selection for promotion was the natural and expected consequence of such conduct while serving in command. Accordingly, the Board continued to find no basis for relief.

⁷ Petitioner noted that paragraph 6 of reference (b) directs that, "[i]n determining whether to grant relief on the basis of equity [or] injustice, [BCNR] shall consider the following:

- a. It is consistent with military and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individual have paid for their misdeeds...
- e. A veteran or Service member's sworn testimony alone, oral or written, may establish the existence of a fact supportive of relief... [and]
- i. Evidence submitted by a government official with oversight or responsibility for the matter at issue and that acknowledges a relevant error or injustice was committed, provided that it is submitted in his or her official capacity, should be favorably considered as establishing a grounds of relief."

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,
XXX-XX-[REDACTED]

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.

6/13/2022

[REDACTED]

Executive Director

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

Board Recommendation Approved (Deny Relief)

Petitioner's Request Approved (Grant Relief – Remove Adverse Information; Direct SSB; Grant AQD SF1)

[REDACTED]

7.13.2022

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