



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

[REDACTED]
Docket No: 3971-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN, [REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) BUPERSINST 1610.10D

Encl: (1) DD Form 149 w/attachments
(2) Fitness report for the reporting period 16 November 2015 to 9 February 2016
(3) Fitness report for the reporting period 10 February 2016 to 15 March 2016
(4) Fitness report for the reporting period 16 November 2015 to 10 June 2016
(5) CO, [REDACTED] ltr 5812 Ser 20/027 of 17 May 16

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Petitioner's naval record be corrected by removing enclosures (2) through (5).

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 August 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of 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 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. On the evening of 29 January 2016, Petitioner consumed various quantities of wine, beer, and vodka, then drove several sailors to their residences before driving to his own. At 1015, on 30 January 2016, Petitioner awoke and called the ship. Upon his arrival, Petitioner acknowledged the waiver of his rights. His blood alcohol concentration (BAC) measured between .046 and .043.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USN, [REDACTED]

c. On 10 February 2016, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 111 (drunken operation of a vehicle), Article 134 (drunkenness-incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug), and Article 86 (absence without leave). The commanding officer (CO) found Petitioner guilty at NJP. Petitioner was awarded reduction in rate to E-5, restriction, forfeiture of pay, and extra duties.

c. Petitioner received a fitness report for the reporting period 16 November 2015 to 9 February 2016. Block 2 of the fitness report documented Petitioner's rate as IC1. In block 43, the reporting senior (RS) noted that, "Evaluation submitted due to reduction in rate awarded at CO's NJP on 10 February 2016 for violation of Articles 111, 134, and 86 of the Uniform Code of Military Justice" and the promotion recommendation was marked "Significant Problems". Petitioner acknowledged the fitness report and did not indicate that he intended to submit a statement. See enclosure (2).

d. Petitioner received a fitness report for the reporting period 10 February 2016 to 15 March 2016. Block 2 of the fitness report documented Petitioner's rate as IC2 and Petitioner's promotion recommendation was marked 'Promotable'. Petitioner acknowledged the fitness report and indicated that he did not intend to submit a statement. See enclosure (3).

e. On 17 May 2016, Petitioner's CO submitted correspondence to the Commander, Navy Personnel Command stating that, he mitigates the NJP proceeding in the Petitioner's case. He restored the reduction in rate affected by virtue of the punishment and request to remove all reference to the reduction in rate for the NJP hearing from Petitioner's official record. See enclosure (4).

f. Petitioner received an evaluation for the reporting period 16 November 2015 to 10 June 2016. Block 2 of the fitness report documented Petitioner's rate as IC1 and his promotion recommendation was marked "Early Promote." See enclosure (5).

g. The advisory opinion (AO) furnished by the Navy Personnel Command (PERS-32) recommended partial corrective action. The AO noted that enclosure (2) was submitted due to reduction in rate awarded at NJP. Reference (b) allows submission of a Special evaluation report to document a reduction in rate. The AO determined that because Petitioner was found guilty at NJP, the evaluation report is valid; however, the mention of reduction in rate should be removed. The AO also noted that enclosure (3) was required according to the reference (b) for the periodic reporting period. The evaluation report is not adverse, contains no adverse comments or performance traits and makes no reference to NJP. The AO also determined that enclosure (3) is valid and block 2 is not in error because the reduction in rate had not been restored during the period of the report. The AO also noted that block 14 of the report is in error as it overlaps the first evaluation report and should be corrected from "15NOV16 to 16MAR16". The AO concluded that other than the block 14 administrative error, the evaluation report is valid and contains no adverse information.

h. The AO furnished by the Office of Legal Counsel (BUPERS-00J) noted that Petitioner's CO mitigated Petitioner's reduction in rate and the reduction in rate is still reflected in overlapping evaluation & counseling records. The AO reviewed enclosures (2) through (5) and

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN, [REDACTED]

determined Petitioner's CO intended to undue the reduction in rate by replacing enclosures (2) and (3) with enclosure (4). The AO recommended that the Board grant relief by removing enclosures (2) and (3) and to redact the word "MITIGATION" in Block 31 of enclosure (4). The AO also recommended that the Board deny Petitioner's request to remove all other documents.

i. Petitioner contends that removing the contested documents would honor the wishes of the CO who presided over NJP. The validity of the documents that were submitted in error due to his transfer should reflect appropriately his record. Petitioner admits that he made a mistake in January 2016, took full responsibility for his actions and has been successful in proving to leadership, peers, and sailors responsible under my charge that the mistake has not and will not define him. Petitioner claim that he has used his experience to motivate other sailors to persevere through challenges they encounter and to have faith in process, policies, and the forgiveness shown through second chances and hard work please.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an error warranting partial corrective action.

In this regard, the Board noted that Petitioner's received NJP pursuant to the *Manual for Courts-Martial* (2019 ed.) for violating UCMJ Articles 86, 111 and 134. The Board also noted that Petitioner's CO subsequently mitigated the NJP by restoring Petitioner's grade to E-6 and by requesting the removal of official records that reference the reduction in rate for NJP. The Board concurred with PERS-32 AO that Petitioner's fitness reports were valid. The Board, however, substantially concurred with the BUPERS 00J AO that, based upon enclosures (4) and (5), it was clearly the CO's intent to undue the reduction in rate by replacing enclosures (2) and (3) with enclosure (4). The Board, thus concluded that enclosures (2) and (3) should be removed from Petitioner's record. Additionally, the Board concurred that enclosure (4) should be modified by redacting the term "MITIGATION" from block 31. The Board also determined that enclosure (5) is a matter of official record and should be retained in Petitioner's official record.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) and (3), and modifying enclosure (4) by redacting the term "MITIGATION" from block 31.

DFAS conduct an audit of Petitioner's pay record to ensure appropriate payment of allowance due to the restoration of his rate.

No other changes to Petitioner's 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-entitled matter.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN, X [REDACTED]

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/26/2022

[REDACTED]

Executive Director

Signed by [REDACTED]