



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

██████████
Docket No: 4824-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████, USN,
XXX-XX-██████████

Ref: (a) 10 U.S.C. §1552
(b) OPNAVINST 5370.2D, Navy Fraternalization Policy, 6 January 2016
(c) MILPERSMAN 1611-010, Officer Performance and Separations for Cause
(d) SECNAVINST 1920.6C, Administrative Separation of Officers, 15 December 2005
(e) 10 U.S.C. § 515
(f) 10 U.S.C. § 1176

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214 (20000119 – 20170930)
(3) NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office,
1 October 2017
(4) DD Form 214 (20171001 – 20190630)
(5) Naval Air Station ██████████ CO Memo 1752 Ser N91/8-0038, subj: Results of
Incident Determination Committee ICO [Petitioner] Case Number ██████████,
17 January 2018
(6) Patrol and Reconnaissance Wing ██████████ CO Memo 1610 Ser N00/228, subj: Punitive
Letter of Reprimand, 17 May 2018
(7) State of ██████████ Marriage Record, Application Number 2018 ML 524, 19 June 2018
(8) Petitioner's Memo, subj: Nonjudicial Punishment Report ICO [Petitioner],
18 May 2018
(9) Patrol and Reconnaissance Wing Eleven CO Memo 1610 Ser N00/385, subj: Punitive
Letter of Reprimand, 7 August 2018
(10) Patrol and Reconnaissance Wing ██████████ CO Memo 1610 Ser N00/465, subj:
Nonjudicial Punishment (NJP) Report ICO [Petitioner], 5 September 2018
(11) BUPERS Memo ██████████, subj: Administrative Separation ICO
[Petitioner], 6 April 2019
(12) NPC (PERS-834) Memo ██████████ subj: Notification of Administrative
Separation Processing, 4 January 2019
(13) Petitioner's Memo, subj: Acknowledgment of Rights, 22 January 2019
(14) Petitioner's Memo, subj: Response to Notification of Administrative Separation
Processing Case of [Petitioner], 22 January 2019

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

1. Pursuant to 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 to be restored to active duty at his prior rank of E-8 so that he can be complete the active service necessary to qualify for transfer to the Fleet Reserve or, alternatively, that he be provided the constructive service credit necessary to attain 20 years of active service.

2. The Board reviewed Petitioner's allegations of error or injustice on 29 July 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. As discussed further below, I do not believe that the Board's findings and/or recommendations go far enough in identifying and remedying the injustices suffered by Petitioner, and provide my own recommendation for relief. 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. Petitioner's personal appearance, with or without counsel, would not materially add to the Board's understanding of the issues involved in his case. Accordingly, Petitioner's request for a personal appearance was denied and the Board considered his case based upon the evidence of record.

c. Petitioner enlisted in the Navy and began a period of continuous active duty service on 19 January 2000. He rose to the rank of Senior Chief Petty Officer (E-8) during this enlistment. See enclosure (2).

d. Petitioner asserts that he was in a bad marriage and that he was the victim of physical and emotional abuse. In the midst of this bad marriage, he began a long distance, personal relationship with a female E-6 assigned to a different command.¹ He relocated his then-spouse to [REDACTED] in June 2017, so that they could obtain a divorce in [REDACTED] while he remained at his duty station in [REDACTED]. See enclosure (1).

e. On 30 September 2017, Petitioner was honorably discharged to accept a commission as a warrant officer. See enclosure (2).

f. Effective 1 October 2017, Petitioner was appointed as a Chief Warrant Officer Two (CWO2) in the Navy. See enclosure (3). He continued service on active duty with no break in service. See enclosure (4). Petitioner acknowledges that his relationship with the E-6 continued after his commissioning, and that their bond grew deeper over time. See enclosure (1).

¹ This is relevant in that her assignment to a different command prevented this relationship from violating the Navy's fraternization policy per reference (b).

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

g. By memorandum dated 17 January 2018, the Naval Air Station (NAS [REDACTED]) Incident Determination Committee (IDC) substantiated allegations that that Petitioner's spouse physically and emotionally abused Petitioner, and unsubstantiated an allegation that Petitioner physically abused his spouse. See enclosure (5).

h. Petitioner asserts that his divorce became final on 1 February 2018. See enclosure (1).

i. On 4 April 2018, Petitioner enabled the E-6 with whom he was engaged in a personal relationship to enter his gated community, which resulted in an altercation with his former spouse.² This incident prompted Petitioner's former spouse to report to Petitioner's command that the E-6 was trespassing on her property, which in turn resulted in the initiation of a command-initiated preliminary inquiry (PI) that found the appearance of an unduly familiar relationship between Petitioner and the E-6 in violation of reference (b).³ See enclosure (6).

j. On 14 May 2018, Petitioner applied for a marriage license with the E-6. See enclosure (7).

k. On 17 May 2018, Petitioner accepted non-judicial punishment (NJP), at which he was found guilty of fraternization in violation of Article 134, Uniform Code of Military Justice (UCMJ), for engaging in an unduly familiar relationship with the E-6. He received a punitive letter of reprimand (PLOR), which stated that the command was accepting the risk of returning him to his deployed unit and believed that he had "significant potential for future naval service and that [he was] an asset to [his] unit." It also specified that there was no intent to request his detachment for cause (DFC), or to recommend that he be required to show cause for retention in the Navy. See enclosure (6).

l. On 18 May 2018, Petitioner was officially married to the E-6.⁴ See enclosure (7). Petitioner did not make his command aware of this marriage.

m. By memorandum dated 18 May 2018, Petitioner responded to his NJP, accepting full responsibility for his actions and stating that he "can respectfully assure that this conduct will never happen again." See enclosure (8).

n. On 18 July 2018, Petitioner's former spouse recognized the ring that the E-6 was wearing. She subsequently searched the public records and discovered the marriage license on file, and forwarded a copy of the license to Petitioner's command. See enclosure (11).

o. On 7 August 2018, Petitioner received NJP for two specifications of false official statement (FOS) in violation of Article 107, UCMJ,⁵ and one specification of fraternization in

² It is not clear from the record why Petitioner's former spouse was present at the time that Petitioner admitted the E-6 to his residence.

³ Specifically, the PI found that, in addition to the events of 4 April 2018, Petitioner spent the evening of 10 March 2018 with the E-6 at a public fundraising banquet.

⁴ There was a three-day waiting period after applying for a marriage license in the state of [REDACTED]

⁵ The two false official statements alleged were Petitioner's statement in his response to his first NJP that "I can respectfully assure that this conduct will never happen again," and that he had sworn to the first NJP authority

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

violation of Article 134, UCMJ.⁶⁷ His punishment consisted of another PLOR, which informed Petitioner that the command would recommend that he be separated from the Navy as a probationary officer and that he not be afforded the opportunity to revert back to his enlisted grade to retire. See enclosure (9).

p. On 13 August 2018, Petitioner appealed his NJP to the next higher command. His appeal was denied on 30 August 2018. See enclosure (10).

q. By memorandum dated 5 September 2018, Petitioner's command prepared a Report of NJP in accordance with reference (c). He recommended that Petitioner be DFC, as Petitioner's conduct was prejudicial to good order and discipline and he had lost all confidence in Petitioner's ability to effectively lead in any capacity. He also requested that Petitioner not be afforded the opportunity to revert back to his previous enlisted paygrade to retire, and that he be separated as a probationary officer (and therefore not afforded a Board of Inquiry (BOI)). This Report of NJP was provided to Petitioner for comment. See enclosure (10).

r. On 20 December 2018, Petitioner was DFC from his command. See enclosure (11)

s. By memorandum dated 4 January 2019, Petitioner was notified that administrative action to separate him as a probationary officer for misconduct⁸ and substandard performance of duty⁹ had been initiated in accordance with reference (d). See enclosure (12).

t. On 22 January 2019, Petitioner acknowledged receipt of enclosure (12), and indicated his desire to make a statement. See enclosure (13).

u. By memorandum dated 22 January 2019, Petitioner provided a statement in response to his administrative separation notice. In this response, he requested a BOI due to the long-term financial implications at stake in his separation. Alternatively, he requested the opportunity to submit a retirement package and to retire effective 19 January 2020, or to be permitted the opportunity to reenlist at his previous enlisted rank in accordance with reference (e). In this response, Petitioner noted that he applied for the marriage license prior to his NJP on 14 May 2018, and his marriage became effective on 18 May 2018, because of [REDACTED] statutorily-mandated three-day waiting period, and that his decision to get married was not meant to

during the NJP hearing that his relationship with the E-6 was over and that further inappropriate conduct would not happen again when in fact he had already applied for a marriage license.

⁶ Petitioner had also been charged with failure to obey an order or regulation in violation of Article 92, UCMJ, but was not found guilty of this offense. See enclosure (10). It is not clear from the record why this charge was dismissed, but it would likely have been duplicative with the fraternization offense.

⁷ In finding Petitioner guilty of fraternization in violation of Article 134, UCMJ, his commander relied upon the provision of reference (b) which states that "conduct, that constitutes fraternization is not excused or mitigated by a subsequent marriage or declared relationship between offending parties."

⁸ The specific conduct alleged was two specifications of false official statements in violation of Article 107, UCMJ, and two specifications of fraternization in violation of Article 134, UCMJ.

⁹ The specific basis for substandard performance of duty was Petitioner's inability to maintain adequate levels of performance as evidenced by his failure to conform to prescribed standards of military deportment.

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

undermine his command or the Navy but rather to ensure that his continued relationship did not run afoul of the Navy's fraternization policy. He acknowledged that he should have been more clear with his command regarding his future intentions with the E-6, but denied ever stating that his relationship with the E-6 was over. With regard to his request for a BOI, Petitioner noted that Congress has established sanctuary protections for certain regular commissioned officers and to all enlisted Sailors within two years of retirement eligibility. He also noted that officers with more than six years of service are entitled to a BOI before being involuntarily separated regardless of the proposed characterization of service. He argued that the rationale for these additional protections should be extended to him as well, as he had over 19 years of service and could not be involuntarily separated or deprived a BOI for the same conduct if he had not been appointed as a warrant officer. He also argued that a BOI was critical to determine whether his conduct actually violated the fraternization policy, as he questioned whether his relationship was actually prejudicial to good order and discipline, as required to establish a violation of Article 134, UCMJ. He also questioned a response to a Congressional inquiry regarding his case which suggested that Petitioner should have sought an exception to the Navy's fraternization policy, noting that, unlike the Army, the Navy has no published procedures for making such a request. Finally, Petitioner commented that there is no published guidance in the Navy for marriages between officers and enlisted Sailors, despite the fact that they are not uncommon. As such, he suggested that marital relationships are intended to be protected from criminal consequences, and that he had been already been punished for his pre-marital relationship during his first NJP hearing. See enclosure (14).

v. By memorandum dated 6 April 2019, the Deputy Chief of Naval Personnel (DCNP) recommended to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) that Petitioner be involuntarily separated with a general (under honorable conditions) characterization of service. See enclosure (11).

w. By signature dated 29 April 2019, the ASN (M&RA) approved the recommendation of the DCNP that Petitioner be involuntarily separated with a general (under honorable conditions) characterization of service. See enclosure (11).

x. On 30 June 2019, Petitioner was administratively separated from the Navy under honorable conditions for misconduct with a general discharge. He had completed 19 years, five months, and 12 days of active service as of his discharge date. See enclosure (4).

y. Petitioner, through counsel, asserts that he received legal counsel prior to his first NJP which lead him to believe that his marriage to the E-6 would prevent his continuing relationship from being repeatedly punished. He also again denied having lied to his commander regarding the continuing nature of his relationship with the E-6 during the NJP hearing. Petitioner further asserts that PLOR he received for his first NJP was inaccurate and misleading in that it stated, "By withholding the truth under oath during questioning, you have eroded your integrity as a commissioned officer." Specifically, he asserts that this PLOR was prepared prior to his NJP hearing, and that the charge of false official statement was dismissed by the commander during the NJP hearing. This is relevant, he claims, because this reference was later used to support the charge of false official statement in the second NJP. He also argues that the charges in the

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

second NJP were not supported in fact or law. Specifically, he asserts that he was charged with fraternization on 18 May 2018, the day after NJP when his marriage became official. He also claims that he was never provided a copy of the PI upon which his second NJP was based.¹⁰ Petitioner again denied having made any false official statements. Petitioner's counsel further asserts several errors in the memorandum prepared to brief the ASN (M&RA) on Petitioner's case. Specifically, he noted that the ASN (M&RA) was not provided the options of separating Petitioner with an honorable characterization of service, or of affording him a BOI.¹¹ He ultimately asserts that it was an injustice to separate Petitioner after 19 years, five months, and 12 days for falling in love and getting married, and even more of an injustice to deny him an administrative hearing given the length of his honorable and faithful service. He contends that the Navy could have provided him this due process, but choose not to because the likely outcome would have been his retention or transfer to the Fleet Reserve.

z. Per reference (b), "[p]ersonal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited." Additionally, "[p]ersonal relationships between chief petty officers (CPO) (E-7 to E-9) and junior personnel (E-1 to E-6), *who are assigned to the same command*, that are unduly familiar and that do not respect differences in grade or rank are prohibited (*emphasis added*)." Finally, reference (b) provides that "[c]onduct, that constitutes fraternization is not excused or mitigated by a subsequent marriage or declared relationship between offending parties," and that "Service Members who are married... to other Service Members, must maintain the requisite respect and decorum attending the official relationship while either is on duty or in uniform in public as Navy standards of conduct still apply."

aa. Reference (e) provides that a regular warrant officer "who has been discharged from a regular component of an armed force ... may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a [probationary warrant officer so discharged] may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer."

BOARD CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board finds sufficient evidence of an injustice warranting partial relief, as described below.

The Board found no procedural or substantive errors in Petitioner's administrative separation via notification procedures. Per reference (d), Petitioner was a probationary officer because less than three years had passed since his acceptance of a permanent appointment as a warrant

¹⁰ Enclosure (11) reflects that no PI was conducted prior to Petitioner's second NJP because his command deemed the marriage certificate provided by Petitioner's former spouse to be sufficient evidence to warrant charges against Petitioner.

¹¹ Petitioner's counsel also noted that the ASN (M&RA) was not provided the option of reverting Petitioner to his last enlisted grade and affording him an administrative separation board, but did not provide any authority by which the ASN (M&RA) may have done this. The Board is not aware of any such authority.

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

officer.¹² As such, he was not entitled to a BOI since an other than honorable characterization of service was not contemplated in his case. It appears that Petitioner was afforded and availed himself of the rights afforded to him under the notification procedures applicable to probationary officers. The Board also found no substantive errors in the basis for Petitioner's discharge. This Board is not an investigatory body. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that naval officials properly executed their duties. In this regard, the Board found insufficient evidence to overcome the presumption that the charges for which Petitioner received NJP were supported by adequate evidence; that both the NJP authority and the NJP appellate authority for Petitioner's second NJP reviewed both the evidence against Petitioner and that presented in his defense, and evaluated such evidence appropriately; and that the sufficiency of the evidence to support Petitioner's second NJP was confirmed by proper legal authority upon appeal. Although Petitioner denies having ever assured his commander during the first NJP hearing that his relationship with the E-6 was over, he has not overcome the presumption that such a comment was in fact made. Accordingly, the Board finds no error in either Petitioner's NJP or his administrative separation pursuant to notification procedures.

Although the Board found no technical error in Petitioner's discharge, it unanimously found that the circumstances of Petitioner's discharge after more than 19 years of otherwise honorable service without the benefit of a BOI was a clear injustice. The only reason that Petitioner was not entitled to a hearing to consider his administrative separation was because he was appointed as a commissioned warrant officer. He was presumably selected for appointment as a commissioned warrant officer due to his many years of superior performance and potential as an enlisted Sailor. Absent this appointment, not only would he have been entitled to an administrative separation board for exactly the same conduct, but he would have received "sanctuary" protection pursuant to reference (f) and would therefore have been retained on active duty until qualifying for retirement. As such, the Board found the denial of Petitioner's very reasonable request for a BOI, and the resultant denial of retirement benefits absent such a BOI, to essentially be punishment for his many years of meritorious service and excellence. This is fundamentally unfair, and therefore a clear injustice warranting relief.

The Board also found Petitioner's administrative separation, and therefore the denial of his retirement benefits, after more than 19 years and five months of otherwise honorable and meritorious service, to be excessively disproportionate to his misconduct under the circumstances. First, Petitioner's relationship with the E-6 became a violation of the Navy's fraternization policy only due to his commissioning date, which was outside of his control. This relationship did not constitute fraternization at the time that it began, since he was himself enlisted at the time and not in the same command as the E-6. The relationship became a violation of the Navy's fraternization program only when Petitioner was appointed as a warrant officer. However, Petitioner had no control over the date of his commissioning date, and he could not consummate his marriage to the E-6 until his divorce with his former abusive spouse was complete. Petitioner was appointed as a warrant officer at the earliest possible date, which happened to be before his divorce was finalized. If he had been appointed at a later date, he may

¹² See paragraphs 24 and 25c of enclosure (2) to reference (d).

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

have been able to consummate his marriage to the E-6 while still enlisted, and therefore remained in compliance with the fraternization policy.¹³ The Board found it to be fundamentally unfair that Petitioner was denied the opportunity to complete 20 years of service arguably based upon his arbitrarily-set commissioning date. Additionally, Petitioner's command did not believe that his relationship with the E-6 warranted his administrative separation after the first NJP. To the contrary, Petitioner was described as an invaluable asset to the command, and specifically recommended not to show cause for retention. The only thing that changed after he was recommended for retention was that his marriage to the E-6 became known. As discussed above, a marital relationship does not violate the fraternization policy. Accordingly, if he remained in violation of the fraternization policy, he would have been so only from the time that his NJP hearing concluded until midnight that evening. Given Petitioner's long and honorable service, his administrative separation, especially without the benefit of a BOI, just six months short of qualifying for retirement benefits was excessively disproportionate for such minor misconduct.

Finally, the Board found the memorandum forwarding to the ASN (M&RA) the recommendation that Petitioner be administratively discharged under honorable conditions to be woefully inadequate to inform the ASN (M&RA)'s decision. Enclosure (11) did not adequately highlight for the ASN (M&RA) that the DCNP's recommendation would deprive Petitioner of all retirement benefits despite the fact that he had more than 19 years of otherwise honorable and meritorious service. It buried the duration of Petitioner's total service in the middle of a paragraph that highlighted his limited service as a warrant officer and status as a probationary officer, and made no mention of Petitioner's contentions or requests for a BOI and/or to re-enlist in his former enlisted grade to complete the years necessary for retirement. It also failed to provide the ASN (M&RA) with the option of directing a BOI. While the Board acknowledges that the matters submitted by Petitioner were attached to enclosure (11) and that the ASN (M&RA) is presumed to review all such matters before making a decision, it also recognizes that the ASN (M&RA) is very busy and believes that he should be able to rely upon the DCNP to inform him of the important factors for his consideration. That obviously did not happen in this case. The Board believes that if the ASN (M&RA) had been adequately informed of the relevant facts in this case, he would have at least directed a BOI, if not disapproved the discharge permitted Petitioner to reenlist as an E-8 to complete the 20 years required for transfer to the Fleet Reserve. It also believes that, given the circumstances, a BOI would have recommended, at the very least, that Petitioner be permitted to reenlist as an E-8 in order to achieve sufficient active service to qualify for transfer to the Fleet Reserve.

Having found a clear injustice in the decision to administratively separate Petitioner without the benefit of a BOI, and therefore to deprive him of retirement benefits after more than 19 years of otherwise honorable and meritorious service, the Board determined that equitable relief is warranted. Accordingly, the Board recommends that Petitioner's record be corrected to reflect that Petitioner was authorized to reenlist in his previous enlisted grade upon his discharge as a warrant officer in order to earn sufficient time to qualify for retirement in accordance with

¹³ Reference (b) does not prohibit marriage between officers and enlisted members. Rather, it provides that subsequent marriage does not excuse any conduct in violation of the fraternization policy which occurs prior to the marriage.

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

reference (e), and that he availed himself of this opportunity.

While the Board found an injustice in Petitioner's administrative separation without the benefit of a BOI that likely would have recommended his retention, it found no injustice in Petitioner's characterization of service. While the entirety of Petitioner's enlisted service was honorable, he was properly discharged upon his appointment as a warrant officer and his service to that date was properly characterized as honorable. Petitioner received a DD Form 214 reflecting this honorable service. See enclosure (2). Until his marriage to the E-6, however, the entirety of Petitioner's service as a warrant officer was characterized by his continuing violation of the Navy's fraternization policy and several dishonest statements related to that relationship. As such, the Board found this limited period of active duty service to be properly characterized as general (under honorable conditions).

BOARD RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interest of justice:

That Petitioner's naval record be corrected to reflect that the ASN (M&RA) approved his request to reenlist pursuant to reference (e).

That Petitioner's naval record be corrected to reflect that he reenlisted in the Navy in the grade of E-8 effective 1 July 2019 (i.e., the day after his discharge as a warrant officer per enclosure (4)) pursuant to reference (e), and that he served continuously in that grade until the last day of the month during which he would have achieved 20 years of active service.¹⁴

That Petitioner be issued a DD Form 214 for the period 1 July 2019 until the last day of the month during which he would have achieved 20 years of active service, reflecting that he served honorably during this period in the rate of AWOCS and in the pay grade of E-8, and that the narrative reason for his separation was transfer to the Fleet Reserve (with corresponding type of separation, separation authority, and separation code).¹⁵

That a memorandum be inserted into Petitioner's naval record reflecting that the service credit recommended herein was directed by order of the Secretary of the Navy in accordance with federal law, and that no negative inferences may be drawn from the granting of such constructive credit.

That Petitioner's naval record be corrected to reflect that he was transferred to the Fleet Reserve in the grade of E-8 effective upon the first date that he would be eligible for such transfer after

¹⁴ It is the Board's intent that Petitioner receive the constructive service credit necessary to reach 20 years of active service to make him eligible for transfer to the Fleet Reserve.

¹⁵ This DD Form 214 is in addition to the existing DD Form 214 reflecting Petitioner's discharge as a warrant officer effective 30 June 2019.

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

reaching 20 years of active service, and that he continues to serve in the Fleet Reserve in that grade.

That the Defense Finance and Accounting Service conduct an audit of Petitioner's finance records, and determine what pay and allowances may be due Petitioner as a consequence of the changes to his naval record reflected herein;

That a copy of this record of proceedings be filed in Petitioner's naval record; and

That no further corrections be made to Petitioner's naval record.

EXECUTIVE DIRECTOR CONCLUSION:

While I concur with the Board finding of injustice in the administrative separation of Petitioner so close to his retirement eligibility without the benefit of a BOI, I do not believe that the Board's findings and recommendations go far enough in identifying and addressing the injustice present in this case. Specifically, I have significant doubts regarding the propriety of two out of the three charges for which Petitioner received his second NJP,¹⁶ which constituted half of the charged misconduct for which Petitioner was discharged pursuant to the notification procedures.

Petitioner was married to the E-6 effective 18 May 2018, which is the day after he received NJP for fraternizing with the same E-6. As noted above, a marital relationship does not violate the Navy's fraternization policy, as such a policy would run afoul of the constitutionally-protected right to marriage. Considering that Petitioner was considered married as of midnight on the day after the NJP for fraternization was administered, he was essentially punished twice for the same relationship. By applying for a marriage license on 14 May 2018, which became effective 18 May 2018, Petitioner took affirmative action to bring this relationship into compliance with the fraternization policy, based at least in part upon the legal advice that he received regarding the ambiguous treatment of marriage within the Navy's fraternization policy. Regardless of how the charge may have been drafted, Petitioner was actually punished for marrying the E-6 after having admitted to fraternizing with her.¹⁷ Such punishment represents a violation of Petitioner's constitutionally-protected right to marriage, and would not satisfy the requirements for a violation of Article 134, UCMJ. Further, it is not clear how Petitioner's continuing relationship with the E-6 after the NJP was either prejudicial to good order and discipline or of a nature to bring discredit upon the naval service, which is a required element for a violation of

¹⁶ Only the presumption of regularity sustains the third charge for which Petitioner received his second NJP (i.e., false official statement in violation of Article 107, UCMJ, for reportedly assuring his command that his relationship with the E-6 was over). Petitioner adamantly denies making such a statement, but in the absence of evidence to the contrary I am compelled to accept that he did, in fact, make such a statement. I do, however, believe it possible, if not likely given the circumstances and the fact that no PI was conducted to verify statements made by Petitioner in the first NJP hearing before a different NJP authority, that Petitioner's command misconstrued his assurance that his fraternizing conduct would not occur again as a promise to end the relationship.

¹⁷ This is how the offense was described to the ASN (M&RA) in enclosure (11).

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

Article 134, UCMJ.¹⁸ Petitioner and his new spouse were very discrete about their marriage. In fact, no one knew of their marriage until Petitioner's former spouse noticed the E-6's ring on 18 July 2018, two months after the marriage, and brought it to the command's attention. Additionally, Petitioner was returned to a sea deployment immediately after his first NJP was administered, meaning that he was not physically present with the E-6 during the extremely short period in question. Per reference (b), "[p]rejudice to good order and discipline or discredit upon the naval service may result from, but [is] not limited to, circumstances that: (1) call into question a senior's objectivity; (2) result in actual or apparent preferential treatment; (3) undermine the authority of a senior; or (4) compromise the chain of command." The record does not reflect evidence of any of these circumstances, or others which would prejudice good order and discipline or bring discredit upon the naval service, especially given that the continuing nature of the relationship was unknown by anyone in the command and the offending parties were geographically separated during the very short period in question. Accordingly, I do not believe the second fraternization charge in violation of Article 134, UCMJ, to be supported by the evidence.

Likewise, I do not believe the charge that Petitioner made a false official statement in violation of Article 107, UCMJ, by assuring his command that such fraternizing conduct would not happen again, to be supported by the evidence. Petitioner made this statement in his response to the first NJP by memorandum dated 18 May 2018. At the time that this memorandum was signed, Petitioner was already legally married to the E-6. Accordingly, this statement was not false, but rather reflected Petitioner's honest and accurate understanding of the effect that his marriage had upon the fraternizing nature of the relationship. There is no question that Petitioner could have, and should have, been more transparent regarding his pending marriage to the E-6. He admitted as much in both his matters to the ASN (M&RA) and his application to this Board. This lack of candor, however, does not constitute a false statement. Accordingly, I also do not believe this specification of false official statement in violation of Article 107, UCMJ, to be legally valid.

Petitioner's involuntary discharge without a BOI after more than 19 years of otherwise honorable and meritorious service was an injustice in itself. However, that such discharge was based in large part upon two charges which are not supported by the evidence in record is even worse. Absent these two unsupported charges, there would have been virtually no basis to discharge Petitioner. Accordingly, I believe that Petitioner's discharge was unjust, and that additional corrective action is warranted to remedy that injustice.

¹⁸ Although originally charged with a violation of Article 92, UCMJ, for violating reference (b), that charge was dismissed in favor of a violation of Article 134, UCMJ, for fraternization. As such, the conduct in question must meet the terminal element of being either prejudicial to good order and discipline, or of a nature to bring discredit to the naval service. This terminal element would not have been required to sustain a violation of Article 92, UCMJ.

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

EXECUTIVE DIRECTOR RECOMMENDATION:

In view of the above, I recommend that the following corrective action be taken on Petitioner's naval record in the interest of justice:

That Petitioner's naval record be scrubbed to identify and remove all references to his involuntary separation from the Navy.

That Petitioner receive constructive service credit for the period from 1 July 2019 (i.e., the date after his unjust discharge) until the last day of the month during which he would have reached 20 years of active service.

That Petitioner's name be added to the retired list in the grade of CWO2 effective the first day of the month following the month during which he would have reached 20 years of active service.¹⁹

That Petitioner be issued a new DD Form 214 reflecting a separation date of the last day of the month during which he would have reached 20 years of active service (with corresponding changes to his net active service during the period recorded by the DD Form 214); that his type of separation was "Retirement"; that his separation authority was "MILPERSMAN 1810-010"; that his narrative reason for separation was "Sufficient Service for Retirement"; that his separation code was "RBD"; and that his service was characterized as "Honorable."

That Petitioner be issued an Honorable Discharge certificate for the period in question, as well as all other documents normally provided for a regular retirement after 20 years of honorable service.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrections be made to 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.

¹⁹ It is the Executive Director's intent that Petitioner's record be corrected to reflect that he requested and was approved for retirement in his appointed warrant officer grade effective on the earliest date that he would have qualified for a regular retirement, and that Petitioner receive the benefits that such a retirement would have entailed.

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

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

9/13/2022

[REDACTED]

Executive Director

ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE
AFFAIRS) DECISION:

Board Recommendation Approved (I direct the relief recommended by the Board, as reflected
above)

Executive Director Recommendation Approved (I direct the relief recommended by the
Executive Director, as reflected above)

Board Recommendation Disapproved (Deny Relief; I have determined that no relief is warranted
in Petitioner's case for the following reason(s): _____

_____)

[REDACTED]

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