



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

█
Docket No: 6583-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
XXX XX █ USMCR

Ref: (a) Title 10 U.S.C. § 1552
(b) BCNR Docket NR20180005262

Encl: (1) DD Form 149 w/attachments
(2) Certificate of Release or Discharge From Active Duty (DD Form 214) of 11 Apr 16
(3) CMC ltr 1402 MMPR-1 of 24 Aug 22
(4) CMC WASHINGTON DC 102724Z Aug 22

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 (Board), requesting that his naval record be corrected by reinstating him on active duty, and for his record to reflect he served continuously as though he was never involuntarily separated. Petitioner also requests payment of any owed pay and allowances.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 4 October 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included 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 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.

b. On 1 June 2016, Petitioner was released from active duty and transferred to the Reserve Active Status List of the Marine Corps Reserve due to non-selection for promotion to the next higher grade. As a result of his separation, Petitioner was entitled to full separation pay in the amount of \$90,227.38. See enclosure (2).

c. In June 2018, Petitioner requested that this Board correct his naval record by, in part, removing all negative comments and materials including nonjudicial punishment (NJP) proceedings. On 29 June 2021, the Acting Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) granted a portion of the requested relief, to include removal of

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Petitioner's NJP and related material, and the convening of a Special Selection Board (SSB) to consider Petitioner for promotion to the grade of major. See reference (b).

d. Petitioner was subsequently selected for promotion by the Fiscal Year 2016 USMC Regular Unrestricted Major SSB. On 10 August 2022, Headquarters, Marine Corps, published the authority to promote Petitioner to the grade of major with all pay and allowance effective from 1 April 2015. See enclosures (3) and (4).

e. Petitioner asserts that he was involuntarily separated on 1 June 2016 due to being twice passed for promotion to major, and that he submitted an appeal to remove his NJP to the Board and he was granted relief. Petitioner contends that, if not for the errors in his record, he would not have failed selection to major while on active duty, and he would not have been subject to involuntary separation. Petitioner asserts that he would have never voluntarily chosen to leave the Marine Corps, and he would have maintained his career on active duty.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an injustice warranting relief.

The Board noted the previous corrective action to Petitioner's record and subsequent promotion to major effective 1 April 2015, and acknowledged that Petitioner's argument has merit. He was released from active duty because he twice failed selection for promotion to major. The Board determined that Petitioner's approved promotion effective 1 April 2015 is evidence that he would have been selected while on active duty if not for the adverse material in his naval record, and that he would not have been released from active duty if he had been so selected. Accordingly, the Board determined that, Petitioner should be restored to the Active Duty List (ADL) of the Marine Corps in the interest of justice effective 1 June 2016, and that his record shall reflect that he served continuously on the ADL from 21 August 2004 to present. In addition, provided that Petitioner is otherwise qualified, his restoration to active duty must be effected within 60 days of the date of this letter.

RECOMMENDATION

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

That Petitioner's naval record be corrected by restoring him to the ADL of the Marine Corps effective 1 June 2016.

That Petitioner's naval record be corrected to reflect that he served continuously from 21 August 2004 to the date he is restored to active service.

That Petitioner's restoration to active duty be effectuated within 60 days of receipt of this letter, provided that Petitioner is otherwise qualified.

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That the Defense Finance and Accounting Service (DFAS) conduct an audit of Petitioner's pay record and to disburse any pay and allowance due to Petitioner. The decision of this Board shall not be construed as an intent to grant a waiver of recoupment of Petitioner's separation pay.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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. 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.

11/17/2022

[REDACTED]

Executive Director

Signed by [REDACTED]