



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

██████████
Docket No: 8030-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, USN, ██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) BUPERSINST 1430.16G

Encl: (1) DD Form 149 w/attachments
(2) NAVADMIN 306/20
(3) CO, ██████████ ltr, 14 Sep 22
(4) Record and Disposition of Offense(s), 12 Oct 21
(5) Petitioner's Exception to Policy and Associated Documents, 10 Nov 21
(6) CO Endorsement, Request for Reinstatement of Promotion, 24 Jan 22
(7) ██████████ memo, 9 Sep 22
(8) Advisory opinion by OLC (BUPERS-00J), 30 Nov 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 reinstatement to the rate of Chief Petty Officer/E-7 (CPO/E-7), recalculation of his time-in-rate as a CPO/E-7, and all pack pay and entitlements.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 31 January 2023 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. On 19 November 2020 Petitioner was selected for promotion to CPO/E-7 for Fiscal Year (FY) 2020, Cycle #246. Petitioner was not given an advancement date. However, in February 2021, his commanding officer (CO) recommended his advancement be withdrawn pending legal action. The CO did not issue an adverse Evaluation as required per reference (b). Enclosures (2) and (3).

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b. In October 2021 Petitioner was found not guilty at Captain's Mast of violation of Article 81, Uniform Code of Military Justice (UCMJ) for unlawful entry, two specifications of Article 129, UCMJ for obstructing justice, and two specifications of Article 131b, UCMJ for conspiracy. During the proceedings, the alleged victim testified that Petitioner was given permission to access his room. The CO subsequently dismissed all charges. Enclosure (4).

c. In November 2021 Petitioner requested an exception to policy seeking reinstatement of his promotion to CPO. Petitioner's CO favorably endorsed the request, noting that he mistakenly submitted a withdrawal of advancement instead of a withholding of advancement and did not remove his recommendation of advancement via an adverse Evaluation, as required for advancement withdrawal. Enclosure (5).

d. In January 2022 the CO, Navy Region Southeast, favorably endorsed the request to reinstate Petitioner's advancement, however, Navy Personnel Command (NPC) and Chief of Naval Personnel agreed that it was too late for Petitioner to be reinstated, and that the limiting date, in accordance with reference (b), expired on 31 August 2021. Enclosures (6) and (7).

e. Petitioner contends the advancement was unjustly and impulsively withdrawn by the CO without being awarded NJP, court-marital, or adverse Evaluation as required by reference (b). Petitioner further contends that the charges of violation of the UCMJ were dismissed. Petitioner asserts he exhausted all other measures to resolve the injustice. Enclosure (1)

f. The advisory opinion (AO), furnished by the Office of Legal Counsel (BUPERS-00J), recommended the requested relief be approved, noting that Petitioner demonstrated sufficient grounds for relief and overcame the presumption of regularity. The AO opined that there was no Evaluation issued for withdrawal of advancement as required by reference (b) and the mistake was not caught until after the limiting date expired, which was too late to administratively reinstate Petitioner's promotion. The AO further opined that the requested withdrawal of Petitioner's advancement as a procedural matter, should never have become effective, and concluded that reinstatement of Petitioner's advancement would remedy a material error or injustice. Enclosure (8)

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that the requested relief is warranted. In this regard, the Board substantially concurred with the AO in that the command administratively erred procedurally by withdrawing Petitioner's advancement, when the intent was only to withhold the advancement, pending completion of legal action. Additionally, the Board determined that Petitioner submitted sufficient evidence to support his contentions and concluded that absent this error and injustice, Petitioner would have been advanced in due course.

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RECOMMENDATION

In view of the above, the Board directs the following corrective action. Petitioner's naval record be corrected by advancing him to the rate of Chief Petty Officer/E-7, recalculation of his time-in-rate as a CPO/E-7, as if the withdrawal in advancement had not occurred.

That the Defense Finance and Accounting Service conduct an audit of Petitioner's payment record to determine the pay entitlements that are due as a result of Petitioner's advancement.

That no further changes 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-entitled 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.

3/2/2023

[REDACTED]