



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

[REDACTED]
Docket No: 8004-16
DEC 20 2017

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

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

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 (NR20160008004)
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner, a former active duty officer in the Navy filed enclosure (1) with this Board requesting the following: (1) the removal of a 20 March 2014 nonjudicial punishment (NJP) from his record, (2) the removal of his promotion delay to the grade of lieutenant (O-3), and (3) the restoration of his nuclear ADQ. Petitioner also requests immediate promotion to the grade of lieutenant. Petitioner is currently in the Reserves.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 October 2017, 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 her naval service 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.

b. Enclosure (1) was filed in a timely manner, and it is in the interest of justice to review the application on its merits.

c. Petitioner commissioned in the Navy after graduation from the U.S Naval Academy. On 26 January 2014, Petitioner reported 20 minutes late for duty section turnover smelling of alcohol. He was taken to [REDACTED] Naval Hospital and his blood alcohol content tested at 0.074. On 18 March 2014, Petitioner's Commanding Officer appointed an Investigating Officer (IO) to examine the circumstances of the 26 January 2014 incident.

d. On 20 March 2014, Petitioner received NJP for violating Uniform Code of Military Justice, Article 134 (drunkenness – incapacity for performance of duties through prior wrongful indulgence), and was awarded a punitive letter of reprimand.

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e. The Fiscal Year 2014 (FY-14) U.S. Navy (USN) Lieutenant (LT) All Fully Qualified Officers List (AFQOL) Promotion Selection Review Process identified Petitioner for promotion to the grade of lieutenant (O-3), with a projected date of rank of 1 June 2014.

f. Petitioner's promotion to lieutenant was delayed pending the review of adverse information resulting from the incident on 26 January 2014. The original promotion delay package routed from Navy Personnel Command included information about his 20 March 2014 NJP.

g. Petitioner's fitness report (FITREP) for the period of 14 December 2013 through 27 January 2015, marks Petitioner as "Promotable," ranks him a 3.0 in military bearing/character, and references the NJP in the comments section.

h. On 10 August 2016, PERS 833 emailed Petitioner because the Office of the Judge Advocate General (OJAG), determined that the NJP was unlawful. PERS 833 re-notified Petitioner of his promotion delay and possible removal from the FY-14 USN LT AFQOL. The re-notification of the promotion delay did not reference the unlawful NJP. The re-notification included information about Petitioner's misconduct on 26 January 2014, and included information about the IO's findings.

i. The Secretary of the Navy reviewed an Action Memorandum from the Chief of Naval Operations, dated 20 July 2017, that recommended the removal of Petitioner's name from the FY-14 AFQOL on the basis of the findings of the IO. On 15 August 2017, SECNAV approved the removal of Petitioner's name from the FY-14 USN LT AFQOL.

j. The Board, in its review of Petitioner's service record and application, carefully weighed all factors and determined that Petitioner is entitled to partial relief with respect to the removal of the 20 March 2014 NJP from his record and the removal of the FITREP for the period of 14 December 2013 through 27 January 2015, that references the NJP.

k. The Board considered whether the removal of the promotion delay documentation was appropriate and noted that the promotion removal documents of 17 August 2017 do not reference the NJP and are based on Petitioner's misconduct from 26 January 2014. The Board determined that the promotion delay documents do not contain erroneous or unjust information since they do not reference the unlawful NJP and rely instead on the findings of the IO and the misconduct itself. Accordingly, the Board determined that removal of the promotion delay documents from Petitioner's record is not warranted. Additionally, the Board noted that on 15 August 2017, SECNAV determined Petitioner's name should be removed from the FY-14 USN LT AFQOL based on Petitioner's misconduct. The Board found that the unlawful NJP did not impact SECNAV's decision and that the removal was executed without error or injustice. Accordingly, the Board denied Petitioner's request for removal of the promotion delay documents and denied his request for promotion to lieutenant.

l. The Board determined that Petitioner's misconduct from 26 January 2014 was a sufficient basis for the loss of his ADQ, and that restoration of the ADQ is not warranted.

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CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the email from PERS 833 and the findings of OJAG, that Petitioner receive partial relief with respect to his request. Specifically, Petitioner's record should be corrected to remove the NJP from 20 March 2014, and the FITREP for the period in which it occurred. Petitioner is not entitled to removal of the promotion delay documentation, promotion to the grade of lieutenant, or restoration of his ADQ.

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

RECOMMENDATION:

That Petitioner's NJP removed from his record, to include removal of the NJP, the Report of NJP, the punitive letter of reprimand, and removal of the FITREP for the period of 14 December 2013 to 27 January 2015. That no further relief is warranted.

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

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 7 September 2016.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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.

[REDACTED]

Recorder

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 Regulation, 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.

[REDACTED]

Executive Director