



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, Suite 1001  
ARLINGTON, VA 22204

[REDACTED]  
Docket No. 5557-17  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Commander, Navy Personnel Command

Subj: AMENDED RECOMMENDATION IN THE CASE OF C [REDACTED]  
USN, [REDACTED]

Encl: (1) BCNR ltr JDR Docket No. 5557-17 of 2 Apr 2018

1. The enclosure was previously forwarded for your action.
2. In order to ensure proper implementation, the recommendation contained in the enclosure is hereby amended to read:

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

Petitioner's naval record be corrected by removing the seven pages of derogatory material in Field Code 17 of his OMPF (digital document ID [REDACTED]). See enclosure (2).

Petitioner be granted an FY-16 Active-Duty Navy Captain Line SSB, and if selected, then:

- (a) providing he is duly appointed to Captain/O-6, by and with the advise and consent of the Senate, assign a date of rank and effective date of 1 September 2014 per reference (b);
- (b) the record of retirement from the U.S. Navy effective 31 August 2015, is rescinded. And remove Certificate of Release or Discharge from Active Duty (DD Form 214) and retirement orders from OMPF.
- (c) extend his active duty service to 3 years from date of return to active duty.
- (d) allow for all back pay and allowances for the period of 1 September 2014 to present that reflects paygrade O-6.
- (e) the Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner's records and make payment of any money that Petitioner may be entitled to.


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.

3. The regulations approved by the Secretary of the Navy require that the naval record of Petitioner be corrected, where appropriate, per the approved recommendation of the Board.

11/3/2020



Deputy Director

Signed by: 

Copy to:  
DFAS-IN/COR/Claims  
Petitioner



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

[REDACTED]  
Docket No: 5557-17

APR 02 2018

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED] USN, [REDACTED]  
(RET)

Ref: (a) 10 U.S.C. §1552  
(b) 10 U.S.C. §629  
(c) 10 U.S.C. §624

Encl: (1) DD Form 149 as amended by Petitioner's ltr dtd 5 Feb 18  
(2) Petitioner's Field Code 17 documents (digital document ID #24428575)

1. Pursuant to the provisions of reference (a), Petitioner, a retired commissioned officer in the Navy, filed enclosure (1) with this Board requesting (1) removal of all derogatory material in the Code 17 file in his official military personnel file (OMPF); (2) grant an FY-16 Active-Duty Navy Captain Line Special Selection Board (SSB), and if selected, then (a) promote to Captain/O6 effective 1 March 2014; (b) extend his active duty service from 1 September 2015 [the date he was transferred to the retired list] to 1 March 2017 and make his active duty retirement 1 March 2017; (c) issue an updated DD Form 214 (Certificate of Discharge or Release from Active Duty) that reflects changes to his final rank/grade as Captain/O6 and 24 total years served; (d) update pay records to indicated that he served as a Captain/O6 between 22 and 24 years of service for his last three years [of active service] and; (e) allow for all back pay and allowances for the period of 1 March 2014 to 1 March 2017 that reflects paygrade O6.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 February 2018, and pursuant to its regulations, determined that the partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of 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, with the exception of his request to be granted an SSB.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED] USN, [REDACTED]  
(RET)

b. Numerous Inspector General (IG) investigations substantiated 10 allegations against Petitioner while he was serving as a Commanding Officer. The IG investigations substantiated that Petitioner violated the Navy EO Policy, the Department of Navy Personnel Security Program, U.S. Navy Regulations, Chapter 8 (the Commanding Officer), Article 0802 (Responsibilities), and Military Whistleblower Protection. Six of the 10 substantiated allegations involved acts of reprisal against enlisted members of his Command.

c. On 9 January 2013, the FY-14 Active-Duty Navy Captain Line Promotion Selection Board convened. Adverse information regarding the IG investigation findings was not available to the promotion selection board. Petitioner was selected with a 1 September 2014 projected date of rank. On 19 April 2013, Petitioner was notified of his selection being withheld pending review of adverse information. In response, Petitioner requested to be promoted to Captain, stating in part that procedural and administrative errors were the result of his emphasis on operational issues and his willingness to accept risk in certain administrative programs due to heavy wartime commitments.

d. On 9 September 2014, the Chief of Naval Operations (CNO) noted Petitioner's desire to be promoted and the support of Petitioner's Chain of Command, but recommended that the Secretary of the Navy remove his name from the Promotion List, stating that he did not have the necessary trust and confidence to recommend promotion to Captain, as Petitioner did not meet the needs of the Navy consistent with the exemplary conduct requirements of section 5947 of title 10, U.S. Code. On 28 October 2014, Petitioner submitted response to CNO's recommendation to remove him from the Promotion List, stating that CNO's recommendation is based on information gleaned from defective, biased, and/or poorly conducted IG investigations, and that he was not afforded due process.

e. On 29 September 2014, the Secretary of the Navy removed Petitioner's name from the FY-14 Promotion List.

f. In January 2015, the FY-16 Active-Duty Navy Captain Line Promotion Selection Board convened. Petitioner was eligible for above-zone consideration and failed selection.

g. Petitioner voluntarily retired on 1 September 2015.

h. During the period from 5 June 2016 to 15 October 2016, the previously substantiated allegations against Petitioner were re-investigated by the IG. Subsequently, all previously substantiated allegations were found to be unsubstantiated due to "significant material errors and injustices."

i. Per reference (b), "An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]  
(RET)

USN, [REDACTED]

him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed."

j. Per reference (c), "Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted."

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. In this regard, the Board noted that due to erroneously substantiated allegations against Petitioner, derogatory material was entered into the Field Code 17 file of his OMPF, and his name was removed from the FY-14 Promotion List. Additionally the Board believed the derogatory material adversely affected his competitiveness for promotion and likely caused his failure to select by the FY-16 Promotion Selection Board. The Board concluded that the derogatory material in his Field Code 17 file of his OMPF shall be removed.

The Board also concluded that Petitioner is entitled to an FY-16 SSB. However, if Petitioner is selected and promoted by the FY-16 SSB, the Board is not willing to grant an effective date of rank in the grade of Captain/O6 of 1 March 2014, or other requested relief based on a 1 March 2014 date of rank, as requested by Petitioner. The Board note that, per reference (b), if Petitioner is selected and promoted by the FY-16 SSB, upon such promotion, he may be granted the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed from the FY-14 Promotion List. Further, per reference (c), "Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted." Petitioner's projected date of rank, had his name remained on the FY-14 Promotion List, was 1 September 2014, not 1 March 2014. Therefore the Board concluded that, if selected by the FY-16 SSB, his date of rank shall be 1 September 2014, that his active duty service be extended to reflect that he retired on 1 September 2017, and that he be issued a new DD Form 214 that reflects correct data based on a 1 September 2014 promotion to Captain/O6 and a retirement date of 1 September 2017. The Board concluded that, if Petitioner is selected and promoted, he is also entitled to all back pay and allowances associated with a 1 September 2014 date of rank.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by removing the seven pages of derogatory material in Field Code 17 of his OMPF (digital document ID [REDACTED]). See enclosure (2).



Subj: REVIEW OF NAVAL RECORD IC [REDACTED]  
(RET)

USN [REDACTED]

Petitioner be granted an FY-16 Active-Duty Navy Captain Line SSB, and if selected, then:

(a) providing he is duly appointed to Captain/O6, by and with the advise and consent of the Senate, assign a date of rank and effective date of 1 September 2014 per reference (b);

(b) extend his active duty service from 1 September 2015 to 1 September 2017, and make his active duty retirement effective 1 September 2017;

(c) issue an updated DD Form 214 that reflects changes to his final grade/rank as Captain/O6 and recalculated record of service;

(d) update his pay records to indicated that he served as a Captain/O6 for his last three years of active service, ending on 1 September 2017 and;

(e) allow for all back pay and allowances for the period of 1 September 2014 to 1 September 2017 that reflects paygrade O6.

(f) the Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner's records and make payment of any money that Petitioner may be entitled to.

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.

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.

[REDACTED]  
Recorder

5. Pursuant to the delegation of authority set out in Section 6(c) 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