



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

█
Docket No. 8118-19
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █ USNR,
XXX-XX-█ (RET)

Ref: (a) 10 U.S.C. § 1552
(b) SECNAVINST 1920.6C

Encl: (1) DD Form 149 w/enclosures
(2) Record of Proceedings BOI of 23 Feb 18
(3) CNPC ltr 1920 Ser 00/091 of 21 Jun 18
(4) PERS-00J ltr of 25 Mar 20

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 expunging from his official military personnel file (OMPF) all adverse information indicating involuntary removal from the Navy Reserve as a result of substandard performance of his duties as a Naval Officer, changing his retirement paygrade to O-6 (Captain), and to restore all pay, allowances, and entitlements from 1 September 2018.

2. A three-member panel of the Board, sitting in executive session, reviewed Petitioner's allegations of error and injustice on 10 November 2020 and, pursuant to its regulations, determined that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's 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, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner contends that the Navy conducted his Board of Inquiry (BOI) improperly resulting in him being involuntarily retired from the Navy Reserve in the lesser paygrade of O-5.

c. On 22 February 2018 Petitioner underwent a BOI for violation of the Uniform Code of Military Justice (UCMJ), Article 133 (Conduct unbecoming an officer and gentleman) and Substandard Performance of Duty. The underlying event involved Petitioner's relationship with a civilian woman who was not his wife. The BOI unanimously found that the preponderance of

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the evidence did not support Misconduct (Conduct unbecoming an officer and gentleman) but found that the preponderance of evidence did support Substandard Performance of Duty. Based on the finding, the BOI unanimously recommended Petitioner be separated from the Naval Service for Substandard Performance of Duty in the paygrade of O-6 with an Honorable characterization of service enclosure (2).

d. On 14 March 2018 counsel for the Petitioner submitted a letter of deficiency requesting that Petitioner be retired as an O-6. On 21 June 2018, Chief of Naval Personnel (CNP) recommended retiring Petitioner from the naval service at pay grade O-5 with an Honorable characterization of service enclosure (3). CNP determined Petitioner had not served 6 months honorably as an O-6 pursuant to reference (b). On 28 June 2018, Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN M&RA) retired Petitioner from the naval service in paygrade O-5 with an Honorable characterization of service.

e. Petitioner contends that the BOI determined that Petitioner served satisfactorily for more than six months as an O-6 and thus warranted retirement in grade. Petitioner argues that there was no evidence in the BOI record that Petitioner's substandard performance continued after his promotion to Captain in August 2016. Since the BOI found no misconduct and recommended retirement at the pay grade of O-6, it was unjust for CNP and ASN M&RA to order a retirement grade in the lesser grade of O5.

f. Enclosure (4), an advisory opinion (AO) furnished by the Office of Legal Counsel (PERS-00J), recommended Petitioner's request be denied, due to the fact that Petitioner had not served 6 months honorably as an O-6. The Board noted that the BOI found basis for separation for substandard performance – Petitioner failed to conform to prescribed standards of military deportment.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that pursuant to reference (b), the final decision as to retirement grade rests with the Secretary of the Navy (SECNAV). SECNAV delegated such decisions to ASN M&RA, as such, ASN M&RA determined that the highest grade in which Petitioner served satisfactorily was O5. The Board thus concurred with the AO that retirement at a lesser paygrade of O5 shall be upheld. Additionally, the Board determined Petitioner's request to expunge all adverse information from his OMPF, shall remain in his naval record.

RECOMMENDATION

In view of the above, the Board recommends no relief be granted.

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.

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

1/18/2021

[REDACTED]

Executive Director

PRINCIPAL DEPUTY, ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:
(Performing the Duties of the Assistant Secretary of the Navy (M&RA))

Reviewed and Approved Petitioner Request (Grant Relief)

Reviewed and Approved Board Recommendation (Deny Relief)

6/8/2021

[REDACTED]

PTDO ASN(M&RA)