



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

█  
Docket No: 10095-19  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD FOR █ USN,  
XXX-XX-█

Ref: (a) 10 U.S.C. § 1552  
(b) SECNAVINST 1920.6C  
(c) SECNAVINST 1920.6D  
(d) 10 U.S.C. § 1370

Encl: (1) DD Form 149 w/attachments  
(2) Cmdr, █ (Report of Misconduct) ltr of 17 Jan 18  
(3) BOI Report of 10 Aug 18  
(4) CNP ltr 1920 Ser 00/151 of 12 Dec 18  
(5) Advisory Opinion, Office of Legal Counsel (PERS-00J) memo of 11 Dec 19  
(6) Advisory Rebuttal, █ ltr of 24 Feb 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 changing his retirement grade to Commander (CDR/O-5), DD Form 214 narrative reason for separation from 'Unacceptable Conduct (Officer)' to 'Sufficient Service for Retirement' and O-5 back pay and allowances. Petitioner also request to remove all adverse material related to his Board of Inquiry (BOI) and the █ from his Official Military Personnel File (OMPF).

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 8 December 2020. The names and votes of the members of the panel will be furnished upon request. Petitioner's allegations of error and injustice were reviewed in accordance with administrative regulations, and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of Petitioner's application, together with all material submitted in support thereof, relevant portions of the naval record, and the enclosures, as well as 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 that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

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a. On 10 May 2010, Petitioner attended a dinner sponsored by [REDACTED] of the GDMA. Enclosures (2) and (5))

b. On 17 January 2018, the Commander, [REDACTED] as the Consolidated Disposition Authority (CDA) for [REDACTED] matters issued Petitioner enclosure (2), a Report of Misconduct (ROM) for substantiated allegations that Petitioner violated the Joint Ethics Regulation. Specifically, for receipt of a dinner and the service of a prostitute from [REDACTED], a prohibited source, and for violating Article 133, Uniform Code of Military Justice (UCMJ), for associating with a known prostitute. The CDA recommended that Petitioner be required to show cause for retention in the Naval Service.

c. On 10 August 2018, Petitioner was the subject of a Board of Inquiry (BOI). Petitioner's BOI unanimously voted that the preponderance of the evidence did not support misconduct for violation of Article 92, UCMJ. However, the BOI did vote two to one that the preponderance of the evidence supported misconduct for violation of Article 133, conduct unbecoming an officer and gentleman, specifically, associating with a known prostitute and substandard performance by failing to conform to prescribed standards of military department. Based upon the findings, the BOI recommended that he be separated from the Naval Service for misconduct, with an Honorable characterization of service in accordance with reference (b). The BOI also recommended that Petitioner be retired in the pay grade O-5. Enclosure (3).

d. On 12 December 2018, the Chief of Naval Personnel (CNP) recommendation to the Assistant Secretary of the Navy (ASN) (M&RA)), enclosure (4). The CNP noted that Petitioner and several other high ranking officers were escorted to the basement of a hotel by a female [REDACTED] representative. Once in the basement, the men were offered food and drinks. Toward the end of the meal, prostitutes emerged into the dining area, approximately one for every male counterpart present. There was a firsthand account of Petitioner disappearing into a sauna with a prostitute, and then into an adjoining room where he and the prostitute allegedly engaged in sexual intercourse. The CNP recommended that Petitioner be retired from the Naval Service in the pay grade O-4 with an Honorable characterization of service and separation code (SNC) (unacceptable conduct). On 18 December 2018, the ASN (M&RA) approved CNP's recommendation.

e. Petitioner contends that the preponderance of evidence supports the fact that he did not violate Article 133, UCMJ, all notions of fairness and justice are affronted by the disparate treatment he received, and that he served honorably in the rank of Commander. Petitioner claims that except for the assertions of one officer, the statements by the other officers demonstrates that there was not a general awareness that the women were prostitutes. They believed the women were "friends" of their host, and that this event occurred prior to the scandal breaking and [REDACTED] tactics becoming widely known. Petitioner also contends that his BOI's findings were deficient. Petitioner argued that if there was no basis to find that he violated Article 92, there was no basis by which the BOI could conclude that he violated Article 133, UCMJ. Petitioner further contends that the ASN (M&RA)'s decision to retire him in the grade O-4 was at odds with Navy regulations governing the administrative separation of officers and the BOI findings. Petitioner argued that he served honorably in grade as a Commander and he was punished more severely when compared to those who faced much more serious allegations. Petitioner also

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argued that he served as a Commander for over two years, and according to reference (b), "when the officer's record, in spite of misconduct, is otherwise so meritorious as to demonstrate the officer served satisfactorily in the grade currently held, the recommendation should be for retirement in that grade."

f. In enclosure (5), the advisory opinion (AO) furnished by the Chief of Naval Personnel (CNP) (PERS-00J) recommended that Petitioner's request be denied. The AO noted that Petitioner failed to demonstrate an error or injustice in his record as the BOI findings were supported by a preponderance of the evidence. The AO determined that while the BOI members are required to make a recommendation as to retirement grade, only the Secretary of the Navy (delegated to ASN (M&RA)) has the authority to direct retirement of the Petitioner in the highest grade satisfactorily held.

g. In enclosure (6), Petitioner's response to the AO, Petitioner argued that there is no evidence to suggest that he knew or should have known that having dinner with shipmates and women invited to the party would be considered associating with known prostitutes. Petitioner claims that the officer referred to as providing a firsthand account was sentenced to federal prison. Petitioner also argues that the ASN's decision should not ignore the guidance given in reference (c).

## CONCLUSION

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board substantially concurred with the AO that Petitioner's retirement grade should remain unchanged. In this regard, the Board noted that the CDA substantiated allegations of misconduct. The Board also noted that Petitioner's BOI voted two to one that the preponderance of the evidence supports that Petitioner violated Article 133, conduct unbecoming an officer and gentleman, substandard performance by failing to conform to prescribed standards of military department, and Petitioner's separation from Naval Service.

Concerning Petitioner's contention that the preponderance of evidence supports the fact that he did not violate Article 133, UCMJ, the Board determined that Petitioner's evidence was insufficient to conclude that the CDA, the BOI, the CNP, and the ASN (M&R) having reviewed all the evidence of his case unjustly arrived at the conclusion that Petitioner's action constituted misconduct. The Board also considered Petitioner's contention that he was not treated fairly or the same as other officers, the Board also determined that the Board is not an investigative body and thus relies on a presumption of regularity to support the official actions of public officers and in the absence of substantial evidence to the contrary, will presume that public officers have properly discharged their official duties. Moreover, the Board further determined that it is not within the Board's scope to deliberate on the misconduct or punishment of other service members.

Concerning Petitioner's contention that the BOI's findings were deficient, the Board noted that pursuant to Title 10 U.S.C. § 1182, the BOI is convened to receive evidence and make findings and recommendation as to whether an officer should be retained on active duty. The Board also

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noted Petitioner's letter of deficiency, however, the Board determined that Petitioner's evidence was insufficient to conclude that the findings of misconduct by Petitioner's BOI was unjust or deficient. The Board also considered Petitioner's contention that there was no basis for the BOI to conclude that he violated Article 133, UCMJ if the BOI did not find that he violated Article 92, UCMJ. The Board determined that Petitioner's BOI's finding that he did not violate Article 92, UCMJ, specifically, the Joint Ethics Regulation, did not absolve Petitioner of misconduct for violating Article 133, UCMJ.

Concerning Petitioner's contention that the ASN (M&RA)'s decision to retire him in the grade O-4 was at odds with Navy Regulations governing administrative separation and the BOI findings, the Board substantially concurred with ASN (M&RA)'s retirement grade decision and recommend that Petitioner's retirement grade should remain. In this regard, the Board noted the BOI's recommendation that he retire as an O-5, however, the Board determined that the role of the BOI is to provide a recommendation, and the ASN (M&RA) by authority of the Secretary of the Navy determines the retirement grade when a service member is subject to a grade determination. Moreover, the ASN (M&RA) is not beholden to the recommendations of a BOI. The Board also noted that reference (c) was not in effect when Petitioner was separated, therefore, Petitioner was subject to reference (b). The Board further determined that the ASN (M&RA) acted appropriately according to reference (d), whereby, a commissioned officer will be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned. The Board thus concluded that the ASN (M&RA)'s decision was not arbitrary or capricious and there is no probable material error or injustice warranting corrective action.

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

2/5/2021

[REDACTED]

Executive Director

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ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:

Reviewed and Approved Petitioner Request (Grant Relief)

Reviewed and Approved Board Recommendation (Deny Relief)

JUN 08 2021

[REDACTED]

Acting