



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

[REDACTED]  
Docket No. 7879-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USNR,  
XXX-XX-[REDACTED]

- Ref:
- (a) 10 U.S.C. § 1552
  - (b) MILPERSMAN 1611-010, Officer Performance and Separations for Cause
  - (c) SECNAVINST 1420.3, Department of the Navy Commissioned Officer Promotion Program, 28 March 2019
  - (d) USD (P&R) Memo, subj: Limitation on the Authority of Military Department Correction Boards, 10 February 2015
  - (e) 10 U.S.C. § 629
  - (f) ASN (M&RA) Memo, subj: Delegation of Authority to the Board for Correction of Naval Records (BCNR) to Direct the Convening of a Special Selection Board (SSB), Supplemental All-Fully-Qualified Officers List (AFQOL), and Special AFQOL, 28 November 2017
  - (g) 10 U.S.C. § 628
  - (h) SECNAVINST 1402.1, Special Selection Boards, Supplemental All-Fully-Qualified Officers Lists, and Special Boards, 29 April 2019
  - (i) 10 U.S.C. § 619
  - (j) DODI 1320.04, Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation, 3 January 2014
  - (k) 10 U.S.C. § 8147<sup>1</sup>
  - (l) 10 U.S.C. § 632

- Encl:
- (1) DD Form 149 w/enclosures
  - (2) [REDACTED] Memo 1621 Ser CNE-CNA-C6F/0140, subj: Report of Nonjudicial Punishment ICO [Petitioner], 23 May 2012
  - (3) NAVPERS 1626/7, Report and Disposition of Offense(s), 3 February 2012
  - (4) [REDACTED] Memo 5800 Ser CNE-CNA-C6F/144, First Endorsement of Enclosure (5), subj: Appeal of Nonjudicial Punishment, 20 March 2012
  - (5) Petitioner's Memo, subj: Appeal of Nonjudicial Punishment, 9 March 2012
  - (6) [REDACTED] Memo 5800 Ser CNE-CNA-C6F/143, subj: Appeal of Nonjudicial Punishment 23 March 2012
  - (7) [REDACTED] Memo 1621 Ser CNE-CNA-C6F/168, subj: Punitive Letter of Reprimand, 2 April 2012

<sup>1</sup> This statute was designated as 10 U.S.C. § 5947 at the time in question.

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- (8) CNO Action Memo, subj: Removal of Permanent Promotion to [Petitioner], 30 January 2014
- (9) NPC Memo 5420 Ser 833/0445, subj: Recommendation in case of [Petitioner], 20 March 2015
- (10) Board of Inquiry Findings Worksheet in the case of Petitioner, filed 15 May 2013
- (11) BOI Minority Member Memo 1920, subj: Minority Report ICO Board of Inquiry Proceeding for [Petitioner] to Show Cause for Retention, 27 February 2013
- (12) [REDACTED] CO Memo 1920 N00J/030, subj: Board of Inquiry Results in case of [Petitioner], 19 March 2013
- (13) NPC Memo 1920 Ser 834/254, subj: Your Status in the U.S. Navy, 14 May 2013
- (14) NPC Memo 1920 Ser 833/0922, subj: Removal of Your Name from the Fiscal Year 2013 Active Duty Navy Lieutenant Commander Line Promotion List, 6 May 2014
- (15) BCNR Letter JDR Docket No. 5571-19, 18 February 2020
- (16) BCNR Letter SJN Docket No. 11429-14, 16 September 2015
- (17) DD Form 214
- (18) ASN (M&RA) Action Memo, subj: Navy Reserve Officer Appointment ICO [Petitioner], 8 December 2022
- (19) Report of the FY-17 Special Selection Boards Convened at Navy Personnel Command, Millington, TN on 18 October 2018, approved 6 March 2019
- (20) NPC Memo 1420 Ser 833/0155, subj: Your Permanent Promotion to Lieutenant Commander, 1 March 2023
- (21) SECDEF Appointment Scroll (to LCDR in the USNR), 17 February 2023
- (22) NAVADMIN 120/23, subj: Navy Reserve Promotions to the Permanent Grades of Captain, Commander, Lieutenant Commander, Lieutenant, and Chief Warrant Officer in the Line and Staff Corps, dtg 221502Z MAY 23

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, hereinafter referred to as the Board, requesting removal from his record of a Punitive Letter of Reprimand (PLOR), dated 2 April 2012; reinstatement to active duty; and reinstatement of his original promotion date to Lieutenant Commander (LCDR) of 1 September 2013.<sup>23</sup>

2. The Board reviewed Petitioner's allegations of error or injustice in light of the new material not previously considered on 1 February 2024 and, pursuant to its governing policies and procedures, continued to find insufficient evidence of any error or injustice warranting relief. Documentary material considered by the Board included the enclosures; relevant portions of

<sup>2</sup> Petitioner's claim for relief in this regard was supported only by letter to his Senator.

<sup>3</sup> This application constitutes a request for reconsideration of the Board's previous denial of relief in Docket No. 5571-19, which was itself a remand of the Board's previous decision in Docket No. 11429-14 from the U.S. District Court for the [REDACTED] subsequently granted summary judgment in favor of the Government after receiving Docket No. 5571-19 on remand, and the U.S. Court of Appeals for the [REDACTED] affirmed that decision on 28 March 2022. Petitioner then filed a similar complaint in the U.S. District Court for the [REDACTED] on 13 June 2022. On 14 November 2023, the [REDACTED] dismissed Petitioner's complaint with prejudice because his claim was precluded by the [REDACTED] previous action. Petitioner's present reconsideration request is supported by new evidence not previously considered by the Board, in that he has since been selected for and appointed to LCDR in the U.S. Navy Reserve (USNR).

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Petitioner's naval record; and applicable statutes, regulations, and policies.

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board 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. On 25 January 2012, a preliminary inquiry (PI) determined that Petitioner engaged in inappropriate and flirtatious behavior and e-mail/Facebook message exchanges with the wife of an enlisted member of his command while working in close proximity to her.<sup>4</sup> See enclosure (2).

c. On 17 February 2012, the Chief of Staff, [REDACTED] imposed non-judicial punishment (NJP) upon Petitioner for violations of Article 133 and 134, Uniform Code of Military Justice (UCMJ).<sup>5</sup> During the NJP hearing, Petitioner admitted guilt to the charged misconduct. Petitioner received a PLOR and was required to forfeit \$1,000 pay per month for two months. See enclosures (3) and (4).

d. By memorandum dated 9 March 2012, Petitioner appealed the NJP referenced in paragraph 3c above, requesting that it be disapproved or set aside because "the punishment was unjust and disproportionate to the offense." Specifically, he asserted that he had several family-related expenses that made the forfeitures difficult to pay and provided examples of several other NJPs for comparison. He also apologized for his actions, and for "the stress and embarrassment" he caused to the command. See enclosure (5).

e. After reviewing Petitioner's NJP appeal, the Chief of Staff, [REDACTED] suspended the forfeitures that he had adjudged of his own volition, noting that Petitioner had not conveyed his personal financial situation during the NJP hearing. He did, however, note that Petitioner admitted guilt to the charge offenses and opined that the results of the NJP were neither unjust nor disproportionate to the offenses. Accordingly, he recommended that Petitioner's appeal be denied. See enclosure (4).

f. By memorandum dated 23 March 2012, the Deputy Commander, [REDACTED] denied Petitioner's NJP appeal. See enclosure (6).

g. By memorandum dated 2 April 2012, the Chief of Staff, [REDACTED] issued the PLOR imposed during the NJP proceedings referenced in paragraph 3c above. This PLOR noted that Petitioner admitted during the NJP hearing that he engaged in an unduly familiar relationship with a civilian employee of the command, who was the spouse of an

<sup>4</sup> Petitioner worked in his command's Protocol Office, while the spouse of the enlisted member worked in the adjacent Public Affairs Office. The enlisted member discovered this inappropriate relationship by surreptitiously gaining access to his wife's Facebook account and presented the evidence to the command.

<sup>5</sup> Petitioner was specifically charged with conduct unbecoming an officer and gentleman in violation of Article 133, UCMJ, for engaging in an inappropriate and unduly familiar relationship involving online chats and physical contact (i.e., kissing and touching) with the wife of the enlisted service member on divers occasions between on or about 4 November 2011 and on or about 16 January 2012. He was also charged with a violation of Article 134, UCMJ, for the same alleged conduct, such conduct being to the prejudice of good order and discipline in the armed forces.

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enlisted member of the command, and that the relationship consisted of e-mails Facebook posts and phone calls of a sexual nature, touching and kissing, and conversations of an inappropriate nature during working hours.<sup>6</sup> See enclosure (7).

h. On 3 April 2012, the Fiscal Year (FY) 2013 Active-Duty Navy LCDR (Line) Promotion Selection Board (PSB) convened. Petitioner was amongst the officers selected for promotion, and he was subsequently assigned a projected promotion date of 1 September 2013.<sup>7</sup> See enclosure (8).

i. By memorandum dated 23 May 2012, the Chief of Staff, [REDACTED], prepared a Report of NJP in accordance with reference (b). Despite the reported substantiated misconduct and resulting NJP, he recommended that Petitioner not be required to show cause for retention in the naval service. See enclosure (2).

j. On 17 July 2012, Petitioner was notified that his nomination for promotion to LCDR was being withheld pending resolution and disposition of the misconduct pending against him and a determination of whether he remained qualified for the promotion. In response, Petitioner submitted a statement expressing his deep regret for exchanging flirtatious online posts with the enlisted member's wife and took full responsibility for his actions. See enclosures (8) and (9).

k. Despite the favorable recommendation of the flag officer who imposed NJP, on 13 November 2012 the Commander, Navy Personnel Command (PERS-83) notified Petitioner that the Show Cause Authority had determined that there was sufficient evidence to require him to show cause for retention in the naval service. See enclosure (8).

l. On 14 February 2013, a Board of Inquiry (BOI) convened to consider Petitioner's case. The BOI unanimously found that the preponderance of the evidence substantiated the two alleged actions of misconduct.<sup>8</sup> Despite this finding, the BOI recommended by a majority vote that Petitioner be retained in the Navy.<sup>10</sup> See enclosure (10).

m. By memorandum dated 19 March 2013, Petitioner's commander indicated his nonconcurrency with the BOI's recommendation that Petitioner be retained in the Navy.<sup>11</sup> See enclosure (12).

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<sup>6</sup> Petitioner subsequently elected not to make a statement for the record in response to the PLOR.

<sup>7</sup> The FY 2013 Active-Duty Navy LCDR (Line) PSB selected Petitioner for promotion without access to or knowledge of the NJP or the underlying misconduct because neither had yet been recorded in his naval record.

<sup>8</sup> These charges mirrored those for which Petitioner received NJP. See paragraph 3c and footnote 5 above.

<sup>9</sup> The BOI also unanimously found that the preponderance of the evidence did not support the alternative basis for separation of substandard performance of duty by failing to confirm to prescribed standards of military deportment.

<sup>10</sup> The dissenting member of the BOI submitted a Minority Report explaining her disagreement with the majority's recommendation that Petitioner be retained in the Navy. Specifically, she found that Petitioner had sufficient time in the service to have been trained upon and have understanding of the rules regarding fraternization and inappropriate conduct. She also opined that the only reason Petitioner stopped his inappropriate conduct/relationship was because he got caught. See enclosure (11).

<sup>11</sup> Petitioner had since been reassigned following his detachment for cause from his previous assignment. This endorsement was signed by the Commander [REDACTED]

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n. By memorandum dated 14 May 2013, Petitioner was informed that he was being retained in the Navy pursuant to the recommendation of the BOI. He was advised, however, that this determination did not preclude or limit the use of the information and opinions contained within the Report of NJP at enclosure (2) in future administrative or other proceedings, and that enclosure (2) (with its attachments, to include the PLOR) would be filed in his official record. See enclosure (13).

o. By memorandum dated 30 January 2014, the Chief of Naval Operations (CNO) recommended, contrary to the favorable recommendation of the Commanding Officer, U.S. [REDACTED] that the Secretary of the Navy (SECNAV) remove Petitioner's name from the FY 2013 Active-Duty Navy LCDR (Line) promotion list. In making this recommendation, the CNO opined that Petitioner's conduct with the spouse of a chief petty officer was contrary to accepted standards of personal conduct for a naval officer, and that as a result he did not have the necessary trust and confidence to recommend Petitioner's promotion to LCDR. See enclosure (8).

p. On 1 May 2014, the SECNAV removed Petitioner's name from the FY 2014 Active-Duty Navy LCDR (Line) promotion list. See enclosure (8). This constituted Petitioner's first failure of selection for promotion to LCDR in accordance with reference (c).

q. By memorandum dated 6 May 2014, Petitioner was notified of the SECNAV's decision to remove his name from the FY 2013 Active-Duty Navy LCDR (Line) promotion list. See enclosure (14).

r. On 18 May 2015, the FY 2016 Active-Duty Navy LCDR (Line) PSB convened. Petitioner was amongst the officers considered by this board, but failed of selection for promotion. This constituted Petitioner's second failure of selection for promotion to LCDR. See enclosure (15)

s. On 2 September 2015, the Board denied Petitioner's original request to overturn the SECNAV's decision to remove his name from the FY 2013 Active-Duty Navy LCDR (Line) promotion list and to remove the PLOR from his record in Docket No 11429-14.<sup>12</sup> Specifically, the Board found Petitioner's claim to neither have reciprocated nor engaged in anything other than a platonic relationship with the enlisted member's spouse to be unsupported by the evidence in the record. See enclosure (16).

t. On 31 March 2016, Petitioner was honorably discharged from active duty based upon his second failure of selection for promotion to LCDR in accordance with reference (1). He entered into an agreement to serve in the Ready Reserve until 30 May 2019 (presumably to satisfy his service obligation), and received severance pay in the amount of \$100,069.83. See enclosure (17).

u. On 18 October 2018, a FY 2017 USNR LCDR (Line) SSB was convened to consider certain officers for promotion to LCDR. Petitioner was amongst the officers considered and was

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<sup>12</sup> Petitioner also requested but was denied removal of an adverse fitness report documenting his NJP and the convening of a special department head screening board. Those requests are not discussed here because he has not requested such relief in his present application.

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selected for promotion.<sup>13</sup> The Under Secretary of Defense for Personnel and Readiness approved the report of this SSB for the President on 6 March 2019, effectively placing Petitioner on the FY 2017 USNR LCDR (Line) promotion list with a projected effective date of rank of 1 October 2016 pending formal appointment by the Secretary of Defense (SECDEF).<sup>14</sup> See enclosures (18) and (19).

v. By memorandum dated 21 March 2019, Petitioner was notified that his promotion to LCDR in the USNR was being withheld for further review by the SECNAV. See enclosure (20).

w. On 17 December 2019, the Board denied Petitioner's second request for relief on remand from the D.D.C. in Docket No. 5571.<sup>15</sup> See enclosure (15).

x. By memorandum dated 8 December 2022, the Acting Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) forwarded an appointment scroll with Petitioner's name to the SECDEF with the recommendation that Petitioner be appointed to the grade of LCDR in the USNR. In making this recommendation, the Acting ASN (M&RA) stated that he determined that Petitioner was qualified for promotion and meets the exemplary conduct requirements of reference (k).<sup>16</sup> See enclosure (19).

y. On 17 February 2023, the SECDEF appointed Petitioner to LCDR in the USNR on behalf of the President. See enclosure (21).

z. On 22 May 2023, Petitioner's promotion to LCDR in the USNR was authorized pursuant to his appointment by the SECDEF with an effective date of rank of 1 October 2016. See enclosure (22).

aa. On 10 June 2023, Petitioner was promoted to LCDR in the USNR with an effective date of rank of 1 October 2016. See enclosure (1).

bb. Petitioner contends that the SECNAV's decision to remove him from the FY 2013 Active-Duty Navy LCDR (Line) promotion list should be reversed, and he should be restored to active duty and promoted in the Regular Navy with his original projected promotion date of 1 September 2013, based upon the subsequent decision to promote him off of the FY 2017 USNR LCDR (Line) promotion list. He questions how he could have failed to meet the exemplary conduct requirements for promotion when the SECNAV removed his name from the promotion list in 2014 when the Navy certified his compliance with the exemplary conduct requirements of reference (k) in 2022. See enclosure (1).

## CONCLUSION:

<sup>13</sup> There is no documentation in the record explaining the reason that Petitioner received this SSB.

<sup>14</sup> Appointments to the grade of LCDR in the USNR do not require Senate confirmation.

<sup>15</sup> See footnote 3 for discussion of the subsequent procedural history of this decision.

<sup>16</sup> There are no documents in the record reflecting what information was provided to or considered by the Acting ASN (M&RA) when he made this determination.



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Upon careful review and consideration of all of the evidence of record, the Board continued to find insufficient evidence of any error or injustice warranting relief.

*Board Limitations.*

Before even reaching the merits of Petitioner's claims, the most significant relief that Petitioner seeks is beyond the Board's authority to grant.

Petitioner's request to correct his record to reflect his promotion to LCDR pursuant to his selection by the FY 2013 Active-Duty Navy LCDR PSB is beyond this Board's authority to grant. That Petitioner's promotion was "withheld," vice "delayed," implies that the Senate never confirmed his nomination for appointment to LCDR from the FY 2013 Active-Duty Navy LCDR promotion list.<sup>17</sup> Only the President may appoint Regular officers above the grade of O-3 following Senate confirmation. Accordingly, per reference (d) the Board does not have the authority to correct a naval record to reflect that an officer has been appointed to a certain grade when the officer has not been confirmed by the Senate and appointed by the President to that grade. Although the Board has broad authority to correct a naval record in any way that it deems necessary to correct an error or remove an injustice, that authority cannot be used to usurp the constitutional appointment process.

The Board also lacks the authority to correct Petitioner's record to restore his name to the FY 2013 Active-Duty Navy LCDR (Line) promotion list to enable his nomination pursuant to his selection by the FY 2013 Active-Duty LCDR (Line) PSB to proceed to the Senate for confirmation. Per reference (e), "[i]f an officer whose name is on a list of officers approved for promotion ... to a grade for which appointment is required ... to be made by and with the consent of the Senate is not appointed to that grade ... during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment." Petitioner's promotion eligibility period in this regard was from the date that the FY 2013 Active-Duty Navy LCDR (Line) PSB results were approved, thus transforming the results into an approved promotion list, until the first day of the 18th month following the month during which the list was so approved, although that period could theoretically have been extended for an additional 12 months by the President (or his designee). As such, Petitioner's promotion eligibility period pursuant to his selection by the FY 2013 Active-Duty Navy LCDR (Line) PSB has long since expired, even if theoretically extended to the maximum possible duration. As such, his name would have long since been removed from the promotion list by operation of law in accordance with reference (e) even if the Board were inclined to reverse the SECNAV's decision to remove his name from that list. Again, while the Board has broad authority to correct a naval record in any way that it deems necessary to correct an error or remove an injustice, it may not do so in a manner contrary to law.

Finally, the Board lacks the authority to direct the convening of an active-duty Special Selection Board (SSB) to consider Petitioner for promotion pursuant to the criteria for any PSB predating

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<sup>17</sup> See enclosure (2) to reference (c). "Withhold" is the act of removing an officer's name from appointment or nomination scroll when adverse or reportable information must be reviewed by the SECNAV to determine if the officer remains qualified for promotion. If a name was removed from the nomination scroll, it never would have been presented to the Senate for confirmation.

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his actual removal from the FY 2013 Active-Duty Navy LCDR (Line) promotion list on 1 May 2014. While the Board is empowered by reference (f) to convene SSBs, that authority is circumscribed by the statutory and regulatory requirements pertaining to SSBs. Per references (g) and (h), SSBs may be convened only in cases where errors or omissions precluded an officer's consideration, or proper consideration, by a PSB. Accordingly, an SSB could not be convened to reconsider Petitioner's record pursuant to the criteria of the FY 2013 Active-Duty Navy LCDR PSB because he was properly considered and actually selected for promotion by that board. He also would not be eligible for a SSB related any of the subsequent PSBs which convened while he remained on the FY 2013 Active-Duty Navy LCDR promotion list pending review of his qualification for promotion by the SECNAV because his exclusion from consideration by those PSB was not due to any error or omission. Rather, he was not considered by those subsequent PSBs because he was statutorily ineligible for such consideration.<sup>18</sup> The first PSB for which Petitioner could possibly be eligible for consideration by a SSB was the first which convened after his name was removed from the FY 2013 Active-Duty Navy LCDR (Line) promotion list on 1 May 2014, but then only if the Board found an error or injustice in the NJP, BOI, and/or his resulting removal from the promotion list warranting relief. As discussed further below, the Board found no such error or injustice.

#### *NJP.*

Petitioner has provided no new evidence to call the legitimacy of his NJP and associated PLOR into doubt. The conduct in question was substantiated by a PI, and Petitioner admitted to the misconduct during his NJP hearing. Petitioner was entitled to refuse NJP and demand trial by court-martial if he believed that the evidence either did not support the charges or was inadmissible, or that he would not receive a fair hearing at NJP, but he elected not to do so. Following the NJP, he essentially admitted to the misconduct in his appeal by apologizing for his actions and for the "stress and embarrassment" he caused to the command. The BOI subsequently validated the sufficiency of the evidence supporting Petitioner's NJP, as it independently found that the preponderance of the evidence supported both of the charges previously considered at NJP. Finally, Petitioner expressed his regret and took full responsibility for his conduct in his response to the notification of his promotion withhold. The evidence is more than sufficient to sustain the allegations of misconduct against him.

The punishment imposed under NJP was also appropriate and reasonable under the circumstances. Although his punishment originally included forfeitures in addition to the adjudged PLOR, the imposing authority suspended that portion of the punishment after learning of Petitioner's financial situation for the first time in his appeal. As a result, the only punishment imposed as a result of Petitioner's misconduct was the PLOR. Quite frankly, a PLOR is the bare minimum punishment that Petitioner should reasonably have expected under the circumstances. An officer who engages in an inappropriate relationship with the spouse of an enlisted member of the same command is engaging in egregious misconduct which compromises not only his own authority as an officer but also good order, discipline, trust and readiness within the command. Petitioner's misconduct was worthy of far more severe punishment than a mere PLOR under the

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<sup>18</sup> Per reference (i), an officer whose name is on a promotion list for that grade as a result of his selection by an earlier PSB may not be considered for promotion by a PSB.



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circumstances. As such, there certainly was no injustice in the fact that this PLOR remains in his record.

*Removal from the FY 2013 Active-Duty Navy LCDR (Line) Promotion List.*

There was no error in Petitioner's removal from the FY 2013 Active-Duty Navy LCDR (Line) promotion list. Reference (j) directs the SECNAV to withhold the nomination package of an officer selected for promotion when necessary to ensure that the officer remains qualified for promotion and meets the exemplary conduct provisions set forth in reference (k), while reference (c) provides that the legal bases to withhold a promotion nomination include when an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer; when a show cause BOI has been convened to review the officer's record; when substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the SECNAV or CNO (or their respective designees); when there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in reference (k); and when there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. Any one of these legal bases would have justified the withholding of Petitioner's promotion nomination pending the SECNAV's review of his qualifications for that promotion. Accordingly, the withholding of Petitioner's promotion nomination to enable the SECNAV to review his qualification for that promotion in light of the adverse information substantiated against him was not only appropriate, but was required.

For the reasons stated above, the Board found the SECNAV's decision to remove Petitioner from the FY 2013 Active Duty Navy LCDR (Line) promotion list to be fully supported by sufficient evidence. The PI substantiated the allegations against Petitioner; Petitioner admitted to the misconduct during and after his NJP hearing; and the BOI independently found that the preponderance of the evidence supported the misconduct alleged against Petitioner. The Board concurred with the CNO's assessment that Petitioner's "conduct with the spouse of a chief petty officer was contrary to accepted standards of personal conduct for a naval officer." The FY 2013 Active-Duty Navy LCDR (Line) PSB certainly would not have recommended him for promotion if it was aware this conduct, and Petitioner clearly did not comply with the exemplary conduct provisions of reference (k). Accordingly, the SECNAV's determination that Petitioner was not qualified for promotion to LCDR was not only appropriate, but was also necessary and in the best interests of the Navy.

The Board found no relevance whatsoever in the fact that Petitioner has since been promoted pursuant to his selection by the FY 2017 USNR LCDR (Line) SSB, or that the Acting ASN (M&RA) certified his exemplary conduct to the SECDEF in recommending this promotion. It is not apparent from the record that the Acting ASN (M&RA) was made aware of Petitioner's previous misconduct when he made this certification, as there is no discussion or analysis of it in his transmission of the recommendation to the SECDEF. Even if the Acting ASN (M&RA) was aware of Petitioner's misconduct when he made this recommendation, however, the Board would not agree with his determination that Petitioner met the exemplary conduct requirement of

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reference (k).<sup>19</sup> Petitioner has been appointed to and is currently serving in a grade in the USNR for which he was not qualified. This fact negates any possible injustice Petitioner can claim in his previous removal from the FY 2013 Active-Duty Navy LCDR (Line) promotion list, and certainly does not justify doubling down on this mistake by negating the SECNAV's previous action and restoring him to active duty.

*Restoration to Active Duty.*

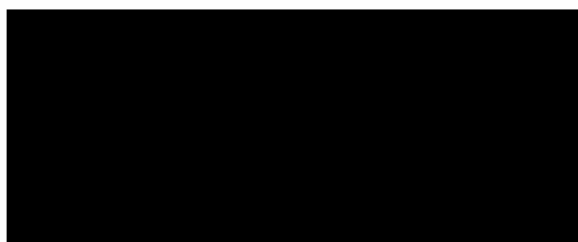
Having found no error or injustice in the adverse information present in Petitioner's naval record, or in the SECNAV's removal of his name from the FY 2013 Active-Duty Navy LCDR (Line) promotion list, the Board also found no error or injustice in either of his failures of selection for promotion to LCDR while in the Regular Navy. Per reference (l), a Navy lieutenant on the active-duty list who has failed of selection to LCDR for the second time shall be discharged no later than the first day of the seventh calendar month beginning the month in which the President approves the report of the board which considered him for the second time. The SECNAV's decision to remove Petitioner from the FY 2013 Active-Duty Navy LCDR (Line) promotion list constituted his first failure of selection for promotion to LCDR in accordance with reference (c), and Petitioner subsequently failed of selection by the FY 2016 Active-Duty Navy LCDR (Line) PSB. Accordingly, Petitioner's discharge from active duty was not only proper, but required by law.

RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on 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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

3/30/2024



<sup>19</sup> As the SECNAV himself is the approval authority for this decision, he will make the ultimate determination in this regard. The Board's conclusion in this regard constitutes its recommendation to the SECNAV.

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SECRETARY OF THE NAVY DECISION:

[REDACTED] Board Recommendation Approved (Deny Relief – I concur with the Board's conclusion and therefore direct that no corrective action be taken on Petitioner's naval record.)

— Petitioner's Request Approved (Grant Relief – I do not concur with the Board's conclusion. Specifically, I find that the Acting ASN (M&RA)'s certification of Petitioner's exemplary conduct in 2022 supersedes the finding made by my predecessor in this regard in 2014, and that my predecessor's decision to remove Petitioner from the FY 2013 Active-Duty Navy LCDR (Line) promotion list was therefore unjust. As such, the fact that Petitioner was subsequently required to be discharged after his second failure of selection for promotion also constituted an injustice. While I cannot legally restore Petitioner to the FY 2013 Active-Duty Navy LCDR (Line) promotion list due to the provisions of reference (e), I do direct the actions necessary to address this injustice. Specifically, I direct that Petitioner's naval record be corrected to reverse the decision of my predecessor to remove him from the FY 2013 Active-Duty Navy LCDR (Line) promotion list and to remove his subsequent failure of selection by the FY 2016 Active-Duty Navy LCDR (Line) PSB. With these failures of selection removed from Petitioner's naval record, I next direct that his record be corrected to reflect that that he was not discharged from active duty due to failure of selection for promotion, and that he be restored to active duty as if he were never discharged. I further direct that the PLOR, and all related adverse information regarding this alleged misconduct, be removed from Petitioner's naval record, and that a FY 2016 Active-Duty Navy LCDR (Line) SSB be convened at the earliest convenient date to consider Petitioner's naval record for promotion absent the adverse material in question. Finally, if Petitioner is ultimately selected for promotion by this SSB and appointed to LCDR in the Regular Navy after confirmation by the Senate, I direct that his effective date of rank be backdated to 1 September 2013 to reflect what it would have been absent the unjust act of my predecessor. The Defense Finance and Accounting Service will conduct an audit to determine what, if any, back pay and allowances Petitioner may be due as a result of these corrections to his naval record.)

[REDACTED]

Date: 11 / 21 / 24