



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

[REDACTED]  
Docket No. 10040-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

Ref: (a) 10 U.S.C. § 1552  
(b) MCO 1610.7A, Performance Evaluation System (Short Title: PES), 1 May 2018  
(c) MCO 5800.16, Legal Support and Administrative Manual (Volume 15 – Officer Misconduct and Substandard Performance of Duty), 8 August 2018  
(d) Marine Corps Manual, 21 March 1980 (with Change 3, 13 May 1996)  
(e) MCO P1070.12K (with Change 1), Marine Corps Individual Records Administration Manual (Short Title: IRAM), 14 July 2000  
(f) SECNAVINST 1920.6D, Administrative Separation of Officers, 24 July 2019  
(g) SECNAVINST 1420.3, Department of the Navy Commissioned Officer Promotion Program, 28 March 2019

Encl: (1) DD Form 149 w/attachments  
(2) MCTFS – Master Brief Sheet, printed 21 September 2023  
(3) ALNAV 077/21, subj: Fiscal Year 2023 U.S. Marine Corps Colonel Selections, dtg 041626Z NOV 21  
(4) NAVMC 10835A, USMC Fitness Report, FITREP II [REDACTED]  
(5) [REDACTED], subj: Report of Substandard Performance of Duty in the case of [Petitioner], 5 July 2022  
(6) Petitioner's Memo 1611 TEB, subj: Acknowledgement of Receipt of Report of Substandard Performance of Duty, *undated*  
(7) Petitioner's Memo 1611 TEB, subj: Statement Regarding Report of Substandard Performance, 20 July 2022  
(8) HQMC Memo 1920 JPL, subj: Termination of Administrative Proceedings and Notification of Promotion Delay in case of [Petitioner], 26 January 2023  
(9) [REDACTED] Memo 1920 SJA, First Endorsement on Enclosure (5), subj: Report of Substandard Performance in the case of [Petitioner], 4 October 2022  
(10) [REDACTED] Memo 1920 CG, Second Endorsement on Petitioner's Response, subj: Notification of Promotion Delay in case of [Petitioner], 23 February 2023  
(11) NAVMC HQ 335, HQMC Routing Sheet, 6 February 2023  
(12) [REDACTED] Memo 1920 SJA, Third Endorsement on Petitioner's Response, subj: Notification of Promotion Delay in case of [Petitioner], 10 March 2023  
(13) CMC Action Memo, subj: Promotion Recommendation in the Case of [Petitioner], 4 April 2023  
(14) HQMC Memo 1400 MMPR-1, subj: Promotion Recommendation in the case of

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

[Petitioner], 7 June 2023

- (15) DD Form 149 with attachments (PERB Application)
- (16) HQMC Memo 1610 MMRP-30, subj: Performance Evaluation Review Board (PERB) Advisory Opinion ICO [Petitioner], 4 October 2023
- (17) HQMC Memo 1610 MMPB-21D/PERB, subj: Performance Evaluation Review Board (PERB) Decision in the case of [Petitioner], Ca [REDACTED] 15 December 2023
- (18) BCNR Letter SEA Docket No. 1483-24, 25 March 2024

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his naval record be corrected by removing all adverse information and references to his relief for cause from command on 3 April 2022.<sup>12</sup> Petitioner further requests reversal of the decision of the Secretary of the Navy (SECNAV) to remove his name from the Fiscal Year (FY) 2023 U.S. Marine Corps (USMC) Colonel (Col) promotion list, and correction of his naval record to reflect that he was promoted to Col with an effective date of rank of 1 October 2022 pursuant to his selection by the FY 2023 USMC Col Promotion Selection Board (PSB).

2. The Board reviewed Petitioner's allegations of error or injustice on 12 March 2024 and, pursuant to its governing policies and procedures, found insufficient evidence of any material error or injustice warranting relief. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies.

3. Having reviewed all 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 regulations within the Department of the Navy.

b. On 7 January 2021, Petitioner assumed command of [REDACTED]

[REDACTED] See enclosure (2).

<sup>1</sup> Petitioner specifically requests removal from his naval record of the adverse fitness report (FITREP) for the reporting period 10 June 2021 to 3 April 2022, which documented his relief for cause; the Report of Substandard Performance of Duty, dated 5 July 2022, which reported his relief for cause, and his acknowledgement and response thereto dated 20 July 2022; the [REDACTED] endorsement of the Report of Substandard Performance of Duty, dated 4 October 2022; the memorandum from the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) terminating the administrative proceedings against Petitioner, dated 26 January 2023, and the Headquarters, Marine Corps (HQMC) routing sheet directing the filing of adverse information in Petitioner's naval record; the memorandum from the Commandant of the Marine Corps (CMC) to the SECNAV, dated 1 June 2024, recommending that Petitioner's name be removed from the FY 2023 USMC Col promotion list; and the CMC's memorandum, dated 7 June 2023, notifying Petitioner of the SECNAV's decision in this regard.

<sup>2</sup> The Board reviewed Petitioner's request to remove his FITREP for the reporting period 10 June 2021 to 3 April 2022, as modified by the HQMC Performance Evaluation Review Board (PERB), concurrently with its present review, in Docket No. 1483-24.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

c. The FY 2023 USMC Col PSB convened on 30 July 2021 and selected Petitioner for promotion. The results of the FY 2023 USMC Col PSB were published on 4 November 2021.<sup>3</sup> See enclosure (3).

d. On 3 April 2022, Petitioner was relieved of command of [REDACTED] by the [REDACTED] commander due to a loss of trust and confidence in his ability to safely and effectively command. See enclosure (4).

e. On 27 April 2022, the [REDACTED] commander, in his capacity as Petitioner's Reporting Senior (RS), issued Petitioner an adverse FITREP from the reporting period 10 June 2021 to 3 April 2022, documenting Petitioner's relief for cause. This FITREP included adverse ratings regarding Petitioner's performance and decision-making ability. With regard to the former, Petitioner's RS stated, "During the day to day operations of the squadron, [Petitioner] demonstrated substandard leadership and judgment relating to administration, unit discipline, manpower, safety, training, and readiness. [Petitioner] did not meet required expectations of a Commanding Officer." With regard to the latter, Petitioner's RS stated, "[Petitioner] consistently made questionable and poor decisions with respect to overall mission execution and accomplishment. Decisions relating to administration, safety and manpower were often delayed, incomplete or wholly dismissed. This inability to manage leadership responsibilities led to a loss of trust and confidence in his ability to safely and effectively command his squadron." Petitioner's RS also stated the following:

[Petitioner] displayed questionable judgment, a lack of attentiveness and poor initiative during the daily execution of his duties during this reporting period. In doing so, he did not create a command climate of trust, discipline and accountability. His inability to set and uphold standards manifested in deficient mission execution spanning unit administration, legal, manpower, safety, training, and operational readiness. This posed a significant barrier to allowing [Petitioner] to command [REDACTED] on its upcoming deployment.

[Petitioner] demonstrated an inability to have difficult and uncomfortable conversations with individuals when dealing with unit and individual performance and conduct. This included poor communication with me. These shortcoming [sic] spanned rules and regulation as well as standards and expectations related to legal, manpower, readiness, and flight safety. [Petitioner] received recurrent coaching, teaching, mentoring and counseling throughout the reporting period but was not able to make meaningful change in his leadership.

See enclosure (4).

f. On 5 May 2022, Petitioner acknowledged his RS's ratings and comments described in paragraph 3e above, and provided the following statement in response:

I acknowledge that my relief from command was due to a breakdown of trust and confidence between my [REDACTED] and me. As a subordinate commander, I understand that I bear responsibility to communicate effectively with my commander in a way that builds trust and confidence in me and my unit's overall effectiveness.

<sup>3</sup> Petitioner was subsequently assigned a projected promotion date of 1 October 2022.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

During my time in command of [REDACTED], I was intimately involved in all aspects of operations, maintenance, aviation safety, manpower and administration, and I actively made decisions, established priorities, and accepted risks to accomplish our mission. Through multiple interactions with the [REDACTED], I received his guidance and priorities, and I believed that I was making adjustments within the squadron based on his priorities and concerns. And within the unit, I believe that there was a high degree of trust and accountability between the Marines and their leadership in preparation for deployment. Ultimately, I was unable to effectively communicate my actions and the unit's progress in a way that built trust and confidence from the [REDACTED] down to me. At no time did I seek to act outside of the guidance or priorities of the [REDACTED] or any regulations, and my integrity and character have remained fully intact throughout this reporting period as they have my entire career.

I remain proud of the exceptional accomplishments of the Marines of [REDACTED] as they have prepared for deployment while supporting multiple units within the [REDACTED] and across the [REDACTED]. They have met every assigned task and demonstrated a remarkable ability to fight through friction. Despite this professional setback for me, I remain a faithful Marine Officer committed to warfighting readiness and dedicated leadership. I am actively engaged as the Future Operations Officer with [REDACTED] where I look forward to ensuring our ability win in combat.

Moving forward, I believe that I have the operational experience, intellect, and leadership ability to continue to serve the Marine Corps as a Colonel. I also believe that I retain significant credibility with senior officers, peers, and subordinates to continue to provide meaningful leadership and advice at the O-6 level.

See enclosure (4).

g. On 24 May 2022, the Reviewing Officer (RO) concurred with the RS's ratings and comments and rated Petitioner's potential as "Unsatisfactory" in his comparative assessment. He added the following comments to Petitioner's FITREP in support of this rating:

[Petitioner's] relief on 3 April 2022 was due to a breakdown of trust and confidence between himself and his Group Commander. This performance-related adversity is acknowledged by [Petitioner] in this report and is not in factual dispute. [Petitioner's] judgement, decision-making, and communication while in command of [REDACTED] did not meet the expectations of his leadership or his position as a Commanding Officer.

[Petitioner] acknowledges receiving guidance and priorities from his Group Commander throughout the period but admits he was unable to effectively communicate his actions and his unit's progress on these. I commend [Petitioner] for his acceptance of responsibility for his performance and for his professionalism in handling his relief. These actions are a testament to the character of this officer and his strong potential for future service. [Petitioner] continues to sustain the traditional concepts of honorable military service and special trust and confidence placed in commissioned officers.

See enclosure (4).

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

h. On 31 May 2022, Petitioner acknowledged the RO's comments referenced in paragraph 3g above and elected to make no further statements. See enclosure (4).

i. On 1 June 2022, the Third Officer Sighter found no factual dispute in Petitioner's adverse FITREP to adjudicate. See enclosure (4).

j. By memorandum dated 5 July 2022, the [REDACTED] prepared a Report of Substandard Performance of Duty in accordance with reference (c) to report Petitioner's relief for cause from command of [REDACTED].<sup>4</sup> He reported that Petitioner performed below the standards expected of commanders, as set forth in reference (d), and that Petitioner acknowledged these deficiencies in the above referenced FITREP. He also, however, noted that Petitioner accepted responsibility for those deficiencies and demonstrated professionalism in his relief. The [REDACTED] recommended that Petitioner not be required to show cause for retention in the Marine Corps, stating that "[w]hile his performance in the dynamic and challenging environment that comes with command was substandard, the evidence highlights that [Petitioner] demonstrates potential for future service." See enclosure (5).

k. Petitioner acknowledged receipt of the Report of Substandard Performance of Duty referenced in paragraph 3j above on 11 July 2022, and indicated his intent to submit a statement in response. See enclosure (6).

l. By memorandum dated 20 July 2022, Petitioner provided a statement in response to the Report of Substandard Performance of Duty referenced in paragraph 3j above. The substance of this statement was similar to his statement in response to his RS's ratings and comments (see paragraph 3f above). Petitioner admitted to having made mistakes and accepted full responsibility for those mistakes. See enclosure (7).

m. By letter dated 30 September 2022, Petitioner was notified that his promotion to Col pursuant to his selection by the FY 2023 USMC Col PSB, projected for 1 October 2022, was delayed pending resolution of the matters contained in the above referenced Report of Substandard Performance of Duty and a determination by the SECNAV regarding whether Petitioner remained mentally, physically, morally, and professionally qualified for promotion. See enclosure (8).

n. By memorandum dated 4 October 2022, the I [REDACTED] endorsed the Report of Substandard Performance of Duty referenced above, concurring with the [REDACTED] recommendation that Petitioner should not be required to show cause for retention in the Marine Corps. He stated that Petitioner "displayed questionable judgment, lack of attentiveness, and poor initiative during the daily execution of his duties as the commanding officer of [REDACTED]" but that he "has demonstrated that he has the potential for continued service by his acknowledgment of his deficiencies, his professionalism during this relief from command, and a

<sup>4</sup> In accordance with paragraph 010807(E) of reference (c), the General Court-Martial Convening Authority (GCMCA) must generate a Report of Substandard Performance of Duty in all cases where he/she finds that the officer's performance or conduct was substandard.



Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

stated desire to continue to serve in the Marine Corps.” The I [REDACTED] did, however, recommend that all adverse material be included in Petitioner’s naval record. See enclosure (9).

o. By memorandum dated 26 January 2023, the DC (M&RA), in his capacity as the Show Cause Authority for the Marine Corps, determined that the information contained within the Report of Substandard Performance of Duty, while adverse, does not warrant processing for administrative separation. Accordingly, he directed that the case against Petitioner be closed, but informed Petitioner that the adverse material concerning his relief for cause would be included in Petitioner’s naval record. With this matter resolved, Petitioner was invited to submit matters for consideration by the SECNAV regarding his promotion status. See enclosure (8).

p. On 4 February 2023, Petitioner submitted matters for consideration by the SECNAV in support of his promotion. See enclosure (10).

q. On 6 February 2023, the above referenced Report of Substandard Performance of Duty, along with its endorsements and Petitioner’s response thereto, was filed in Petitioner’s naval record in accordance with reference (e). See enclosure (11).

r. By memorandum dated 23 February 2023, the [REDACTED] “enthusiastically” recommended Petitioner for promotion to Col pursuant to his selection by the FY 2023 USMC Col PSB, based upon his “personal observation of [Petitioner’s] superb performance as a member of [his] G-3 staff.” See enclosure (10).

s. By memorandum dated 10 March 2023, the [REDACTED] concurred with the favorable promotion recommendation made by the [REDACTED]. Specifically, he opined that sufficient time has passed for key unit leadership to observe Petitioner’s character, and that Petitioner “has demonstrated the mental, physical, moral, and professional qualifications to be promoted to the rank of Colonel.” See enclosure (12).

t. By memorandum dated 4 April 2023, the Commandant of the Marine Corps (CMC), contrary to the recommendations of the Petitioner’s chain of command, recommended that Petitioner be removed from the FY 2023 USMC Col promotion list. In making this recommendation, the CMC stated that Petitioner’s “performance fell below that expected of naval officers and did not comply with statutory exemplary conduct requirements. Moreover, the adverse material was not available to the PSB when it selected him for promotion to colonel.” See enclosure (13).

u. On 1 June 2023, the SECNAV approved the CMC’s recommendation, thus removing Petitioner from the FY 2023 USMC Col promotion list. See enclosure (13).

v. By memorandum dated 7 June 2023, Petitioner was notified of the SECNAV’s decision to remove him from the FY 2023 USMC Col promotion list. See enclosure (14).

w. By memorandum dated 1 September 2023, Petitioner requested that the USMC PERB remove his adverse FITREP for the reporting period 10 June 2021 to 3 April 2022. Specifically, he asserted that the subject FITREP lacked both specificity and factual bases to support its assessments. In support of this request, Petitioner cited facts and provided evidence purportedly

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

to demonstrate that he was effective in command.<sup>5</sup> He also asserted that the FITREP failed to comply with reference (b) because it did not provide a specific factual basis for the adverse ratings, along with other technical errors, and that the FITREP referenced shortcomings which were not supported. See enclosure (15).

x. By memorandum dated 4 October 2023, the HQMC Performance Evaluation Section (MMRP-30) provided an advisory opinion (AO) for the PERB's consideration, recommending that the Petitioner's request for corrective action on the subject FITREP be partially granted. Specifically, the MMRP-30 AO commented that Petitioner's "contentions lack sufficient merit to invalidate the challenged adverse fitness report nor warrant its removal from the official record, but do have sufficient merit to warrant modification of Section A, Item 6b as partial relief."<sup>6</sup> MMRP-30 also opined that Petitioner's RS complied with the reporting requirements of reference (b) for a Marine who is relieved for cause for performance-related adversity.<sup>7</sup> Accordingly, MMRP-30 recommended that the challenged FITREP be amended to "remove the 'X' in Section A, Item 6b 'Derogatory Material'," but otherwise remain unchanged and retained. See enclosure (16).

y. By memorandum dated 15 December 2023, the PERB found that Petitioner failed to demonstrate probable material error, substantive inaccuracy, or injustice warranting removal of the subject FITREP, and directed that it be retained as filed except for the modification recommended by MMRP-30 (see paragraph 3x above).<sup>8</sup> See enclosure (17).

z. Petitioner asserts that the Report of Substandard Performance of Duty, and its endorsements, "serve as pro forma restatements of the narrative presented by the RS in the [FITREP] without object review of billet accomplishments, command climate, or unit performance at any level, including the RO." He further asserts that he was told by senior officers that a substantive rebuttal to his relief for cause would increase the likelihood of a Board of Inquiry and extend his processing timeline. Finally, regarding his promotion, Petitioner contends that the same chain of command that presided over his relief and the reporting has advocated for his professional, moral, and physical ability to serve as a Colonel in the Marine Corps. See enclosure (1).

<sup>5</sup> Amongst the evidence provided for this purpose were the report of a Marine Corps Combat Readiness Evaluation of [REDACTED] from October 2021 to March 2022 in which the evaluating officer noted no weaknesses; [REDACTED]'s aircraft readiness rates over a nine-month period, which were reportedly in line with similar units; a favorable comparison of [REDACTED]'s readiness to that of a sister squadron; the relevant decline in [REDACTED]'s readiness since his relief; the fact that his RS endorsed and nominated [REDACTED] for the Marine Corps Aviation Association Pete Ross Award for Aviation Safety in November 2021, and that [REDACTED] continued its safety trend after this nomination; that other units under his RS's command suffered aviation mishaps not experienced by [REDACTED]; that there were nine deaths under his RS's command since his relief from command, while Petitioner imposed non-judicial punishment five times during his fifteen months in command with no deaths; that he identified manpower shortfalls and requested assistance from his RS on such matters on three separate occasions; and certain accomplishments of the squadron.

<sup>6</sup> MMRP-30 opined that Petitioner's complaint regarding Item 6b was valid because no derogatory material, as defined in reference (b), was prevalent, pertinent, or documented. The relief for cause itself did not necessarily constitute "derogatory material" as the term is defined in reference (b).

<sup>7</sup> Per chapter 5, paragraph 1.c(2)(d)(1) of reference (b), "[f]or a performance-related relief, the RS must provide the factual basis for the assessment in justification block of the appropriate attribute and state in section I that the MRO was relieved for cause."

<sup>8</sup> In accordance with reference (b), Petitioner's request for relief was forwarded to the Board for a final decision.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

#### CONCLUSION:

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

*FITREP for Reporting Period 10 June 2021 to 3 April 2022.*

The Board notes that Petitioner's request to remove the contested FITREP from his naval record was considered and denied by the Board in Docket No. 1483-24. See enclosure (18). For the reasons stated in the decision letter for Docket No. 1483-24, the Board found insufficient evidence of any material error or injustice in the subject FITREP. Petitioner's RS adequately explained the basis for his relief for cause in the FITREP, and Petitioner accepted that assessment of his performance in command without dispute. While he claimed to have been warned against offering a substantive rebuttal to the RS and RO comments at the time, he certainly need not have gone so far as to concur with his RS's assessment of his command performance. Accordingly, the Board adopts the decision in Docket No. 1483-24 and incorporates it by reference herein.

#### *Report of Substandard Performance of Duty.*

The Board found no error or injustice in the submission or content of the Report of Substandard Performance of Duty at enclosure (5). Per reference (c), the GCMCA is required to generate a Report of Substandard Performance of Duty whenever he/she finds that the officer's performance or conduct was substandard.<sup>9</sup> Reference (f) defines substandard performance of duty as the "[i]nability of an officer to maintain adequate levels of performance or conduct" as evidenced by one or more of several stated reasons, to include "[f]ailure to demonstrate acceptable qualities of leadership required of an officer in the member's grade" and "[f]ailure to properly discharge duties assigned to or expected of an officer in the member's grade."<sup>10</sup> Petitioner's performance as the commander of [REDACTED] was so deficient that it caused his RS to lose trust and confidence in his ability to command and resulting in his relief, and Petitioner acknowledged and agreed with these deficiencies in his response to the RS comments in the FITREP. As such, the submission of the Report of Substandard Performance of Duty in question was not only appropriate, but it was also required by Marine Corps Regulations.

Petitioner was afforded and availed himself of the right to submit a statement in response to the Report of Substandard Performance of Duty at enclosure (7). Like he did in his statement in response to the adverse FITREP, Petitioner again acknowledged and agreed with the deficiencies stated in the Report of Substandard Performance of Duty. The Board found no merit to Petitioner's contention that senior officers discouraged him from formally rebutting the basis for his relief for cause at the time. First, the advice that Petitioner claims to have received in this regard was accurate. Petitioner benefitted significantly by his decision to accept responsibility for his shortcomings in command – he avoided potential show cause proceedings which could have resulted in his involuntary removal from the Marine Corps and earned the respect of several senior officers who provided favorable promotion recommendations. Such favorable

<sup>9</sup> See paragraph 010807E of Reference (c).

<sup>10</sup> See paragraph 1a of Enclosure (6) to Reference (f).



Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

recommendations are rare following a relief for cause from a squadron command billet as the relief for cause itself tends to call into question the officer's readiness and qualifications to adequately serve in the higher grade. Petitioner calculated his response to the relief for cause to maximize his opportunity to retain his place on the FY 2023 USMC Col promotion list, and the favorable promotion recommendations that he received under the circumstances demonstrate that those calculations were accurate. It was only after the SECNAV removed his name from the promotion list, contrary to the favorable recommendations of the chain of command, that Petitioner decided to attack the basis for his relief for cause. This Board is not inclined to find any injustice in Petitioner's personal decision to not to avail himself of the opportunities provided to him to challenge the basis for his relief for cause in a timely manner. He had the opportunity to challenge the basis for his relief at the time but elected not to do so. Second, even if Petitioner relied upon bad advice in failing to formally rebut the basis for his relief at the time, he affirmatively accepted the basis for his relief. No one advised him to personally confirm his superior commanders' assessment of his performance in command, but he did so in his responses to both the adverse FITREP and the Report of Substandard Performance of Duty. Finally, the Board found no merit in any of Petitioner's arguments regarding the satisfactory nature of his performance in command. Besides the fact that his argument contradicts his own statements agreeing with his RS's assessment of his substandard performance, the Board found minimal relevance to the material provided by Petitioner to demonstrate his satisfactory nature of his performance. Petitioner was not relieved from command due to poor safety or readiness ratings. Further, the readiness ratings and/or disciplinary problems of other squadrons is irrelevant to the assessment of Petitioner's performance in command. If anything, the relatively low number of disciplinary actions reported by Petitioner over the course of his command tended to confirm his RS's assessment that he was unable to "have difficult and uncomfortable conversations with individuals when dealing with unit and individual performance and conduct." This Board is not an investigative body; it is neither qualified nor mandated to assess Petitioner's performance of duty in command. Rather, it was Petitioner's burden to prove that the assessment of that performance which resulted in his relief for cause was wrong. That burden was raised by the fact that he has twice previously agreed with that assessment. He failed to meet this burden.

*Removal from FY 2023 USMC Col Promotion List.*

Having found no error or injustice in the challenged FITREP or in the Report of Substandard Performance of Duty, the Board also finds no error or injustice in the SECNAV's decision to remove Petitioner from the FY 2023 USMC Col promotion list.

Per reference (g), an officer's promotion pursuant to selection by a PSB may be delayed when, amongst other criteria, there is "[s]ubstantiated adverse information about the officer that is material to the decision to appoint the officer ... under review by the ... SECNAV, ... CMC, or their respective designees"; "[t]here is cause to believe that the officer has not met the requirement for exemplary conduct set forth in [10 U.S.C. § 8167]"; or "[t]here is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he or she was selected for promotion."<sup>11</sup> Petitioner's case satisfied each of these criteria. Accordingly, his promotion was properly delayed to resolve the adverse information pending against him and to enable the SECNAV to determine whether he

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<sup>11</sup> See paragraph 2 of Enclosure (8) to Reference (g).

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

remained qualified for the promotion recommended by the FY 2023 USMC Col PSB. Once the administrative proceedings initiated by the submission of the Report of Substandard Performance of Duty were resolved, Petitioner was invited and availed himself of the opportunity to submit matters for consideration by the SECNAV to inform his decision regarding Petitioner's promotion status. As noted above, Petitioner was able to inform the SECNAV's decision in this regard with the favorable recommendations of his chain of command, which included multiple influential flag officers. The CMC's recommendation to the contrary of those provided by the chain of command at enclosure (13) satisfied the requirements of reference (g).<sup>12</sup> Finally, the SECNAV's decision to remove Petitioner from the FY 2023 USMC Col promotion list was supported by the evidence and appropriate under the circumstances. The FY 2023 USMC Col PSB which found Petitioner to be amongst the "best qualified" for promotion made that determination without knowledge of his performance in command. There is no doubt that it would not have found Petitioner to be so qualified if presented with the adverse information against him. In this regard, the Board found minimal relevance to the favorable promotion recommendations provided by Petitioner's chain of command. These recommendations were made based upon observations of Petitioner's conduct and performance after he had been removed from command, and were made by individuals without responsibility to ensure that only the fully and best qualified officers are promoted to Col. They were also considered and taken into account by the SECNAV in making his determination. Accordingly, there was no error or injustice in the SECNAV's determination that Petitioner was not professionally qualified for promotion to Col.

#### 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.

5/15/2024

[REDACTED]

<sup>12</sup> See paragraph 9a of Enclosure (8) to Reference (g). "The forwarding memorandum [from the CMC] containing the chain of command's recommendation must describe the reasons why the SECNAV should approve the removal action."

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

SECRETARY OF THE NAVY DECISION:

[REDACTED] Board Recommendation Approved (Deny Relief – I concur with the Board’s conclusions 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 conclusions. Specifically, I find that Petitioner has provided sufficient evidence to establish that his relief for cause from command of [REDACTED] was unjust. As such, my previous decision to remove him from the FY 2023 USMC Col promotion list was ill informed and the presence of adverse information in his naval record related to that relief constitutes an injustice warranting relief. Accordingly, I direct that Petitioner’s naval record be corrected to remove all adverse information related to his relief for cause from command of [REDACTED]. This includes, but is not necessarily limited to, the adverse FITREP for the reporting period 10 June 2021 to 3 April 2022; the Report of Substandard Performance of Duty, dated 5 July 2022, and all associated responses and/or endorsements; the DC (M&RA)’s final action on the Report of Substandard Performance of Duty, dated 26 January 2023, and all associated documentation; and all documentation pertaining to my review of his promotion status. An appropriate continuity document shall be inserted in the Petitioner’s naval record in lieu of the challenged FITREP. I further direct that Petitioner’s naval record be corrected to reflect that I did not remove his name from the FY 2023 USMC Col promotion list on 1 June 2023, but rather that he was retained on the promotion list and subsequently promoted to Col with an effective date of rank of 1 October 2022. Upon correction of Petitioner’s naval record and his promotion to Colonel, this decision and his corrected records shall be forwarded to the Defense Finance and Accounting Service to determine what, if any, back pay and allowances may be due Petitioner as a result of this corrective action.)

[REDACTED]

Date: 11/21/24