



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

█
Docket No. 576-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) BUPERSINST 1610.10D, Navy Performance Evaluation System, 1 May 2015

Encl: (1) DD Form 149 w/attachments
(2) NAVPERS 1616/26, Evaluation Report & Counseling Record (E1-E6)
(20171116 – 20180915)
(3) NAVPERS 1616/27, Evaluation Report & Counseling Record (E7-E9)
(20180916 – 20190513)
(4) Marine Corps Reserve Memo 1070 slid, subj: Case of [Petitioner], 13 December 2023
(5) NPC Memo 1610 PERS-32, subj: [Petitioner], 22 January 2024

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 that his evaluation reports for the periods 16 November 2017 to 15 September 2018 and 16 September 2018 to 13 May 2019 be corrected to reflect that the promotion recommendation made by his Reporting Senior (RS) in block 45 was “Early Promote.”

2. The Board reviewed Petitioner's allegations of error or injustice on 12 March 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner’s naval record in the interests of justice. 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 26 November 2018, Petitioner received a regular promotion evaluation report for the reporting period 16 November 2017 to 15 September 2018 due to his selection for advancement to Hospital Corpsman Chief Petty Officer (HMC). Because he was assigned to support a joint force mission, his RS for this period was a Marine Corps lieutenant colonel (LtCol). Although this evaluation was favorable, his RS gave Petitioner a “Must Promote” promotion

recommendation in block 45 of this evaluation report (vice an “Early Promote” recommendation). Petitioner signed this evaluation report, indicating no intent to submit a statement in response. See enclosure (2).

c. On 9 September 2019, Petitioner received a regular detachment evaluation report for the reporting period 16 September 2018 to 13 May 2019. His RS for this reporting period was the same Marine Corps LtCol who issued the previous evaluation report on 26 November 2018. This evaluation report was also favorable and included the same promotion recommendation in block 45. Petitioner signed this evaluation report, again indicating no intent to submit a statement in response. See enclosure (3).

d. By memorandum dated 13 December 2023, the RS for the two evaluation reports referenced in paragraphs 3b and 3c above attested that she had been advised at the time to assign “Must Promote” promotion recommendations to Petitioner because of his status as a “Chief-select” and then as a very junior Chief, and endorsed Petitioner’s request to change the promotion recommendations that she assigned. She took full responsibility for her failure to understand the intricacies of the Navy’s performance evaluation procedures, and described his exceptional performance and reputation. See enclosure (4).

e. Petitioner contends that the relief requested is warranted because his RS was under the mistaken impression that he should have received “Must Promote” promotion recommendations, rather than “Early Promote” recommendations, due to his career status at the time. He contends that reference (b) does not establish such a policy, but rather provides that promotion recommendations should be based solely upon performance. He also claims that a group of Master Chiefs at a Career Development Board informed him that back-to-back evaluation reports with “Must Promote” recommendations as the only Chief Petty Officer being evaluated would be viewed negatively by the Senior Chief board. See enclosure (1).

f. By memorandum dated 22 January 2024, the Navy Personnel Command Performance Evaluations Division (PERS-32) provided an advisory opinion (AO) for the Board’s consideration, recommending that the evaluation reports in question remain unchanged. Per reference (b), such evaluation reports may be modified only through an administrative change or the addition of supplementary material, or through the formal appeals process.¹ A change to block 45 would require the original RS to submit supplementary material, but such material must be submitted within two years of the end date of the report.² See enclosure (5).

MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority found sufficient evidence of an injustice warranting equitable relief.

¹ PERS-32 cited to the current version of BUPERSINST 1610.10, but reference (b) was the version in effect at the time in question. Review of reference (b) revealed no substantive difference in the policy described by PERS-32.

² A copy of this AO was provided to Petitioner for comment, but he failed to respond within the 30 days provided. By the time that Petitioner’s response was received on 18 March 2024, the Board reviewing his application had already adjourned. Petitioner was informed of his right to seek reconsideration upon the submission of new material not previously considered by the Board.

The Majority found an injustice in that Petitioner's future promotion opportunities may be adversely affected due only to the fact that he was assigned to a position supervised by a Marine Corps officer who was unfamiliar with the Navy's performance evaluation system during a period in his career when he would have been too junior to recognize the potential impact of the promotion recommendation assigned by that RS. In this regard, the Marine Corps RS attested that she assigned the promotion ratings based upon advice that she received at the time, and that she was unfamiliar with the intricacies of the Navy's performance evaluation procedures. Further, as Petitioner was just newly selected for Chief at the time, he was not experienced enough to know and inform his RS of the likely perception of these otherwise favorable evaluation reports. Finally, the Majority noted that since Petitioner was the only Chief Petty Officer rated by the RS, a change to the promotion recommendations reflected in the subject evaluation reports will have no impact upon the group summary statistics against which other Chief Petty Officers may have otherwise been compared.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's evaluation report for the reporting period 16 November 2017 to 15 September 2018 be corrected to reflect that his RS's promotion recommendation in block 42 was "Early Promote," with a corresponding correction to block 43.

That Petitioner's evaluation report for the reporting period 16 September 2018 to 13 May 2019 be corrected to reflect that his RS's promotion recommendation in block 42 was "Early Promote," with a corresponding correction to block 43.

MINORITY CONCLUSION:

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

Unlike the Majority, the Minority found insufficient evidence to conclude that Petitioner's career is likely to be adversely affected by his RS's promotion recommendations. Petitioner asserted that a group of Master Chiefs told him that having back-to-back "Must Promote" recommendations as the only Chief Petty Officer being evaluated by a particular RS would be viewed negatively by the Senior Chief board. However, Petitioner does not have back-to-back "Must Promote" recommendations as the only Chief Petty Officer evaluated by his RS as he contends. He was rated as a Hospital Corpsman Petty Officer First Class (HM1) in the first of the two evaluation reports in question. Accordingly, Petitioner has a single "Must Promote" recommendation for his last evaluation report as a HM1, which will have no bearing on his prospects for further promotion as a Chief Petty Officer, and a single "Must Promote" recommendation in his very first evaluation report as a Hospital Corpsman Chief Petty Officer (HMC), which is far from unusual or adverse. Accordingly, the Minority found the premise of Petitioner's claimed injustice to be false.

The Minority also believed that granting Petitioner relief under these circumstances would create a significant injustice for the other Chief Petty Officers against whom Petitioner will compete for future promotions. Such relief would provide him a significant competitive advantage over his peers due solely to both his and his RS's ignorance. If the promotion recommendations assigned by the RS were indeed flawed, reference (b) provided a mechanism for his RS to submit supplemental material to address this error within two years of submission of the evaluation reports. This is the process by which Petitioner's peers would be expected to address this issue, but the Majority's recommendation would enable Petitioner to avoid having such a mistake addressed through supplemental material, thus eliminating from his record any reference to the original promotion recommendation. The Minority noted that Petitioner will be entitled to communicate with and provide matters for consideration by his future advancement selection boards. As such, the Minority believed a letter from the RS to such selection boards like that which she provided to this Board to be a far more fair and equitable means to address any potential injustice.

Finally, while the RS endorses Petitioner's request for relief in enclosure (4), she does not actually state that she would have provided him an "Early Promote" recommendation if she was not better advised. Further, while the performance ratings assigned by the RS were favorable, they were not so exceptional as to necessarily warrant an "Early Promote" recommendation. In fact, in both his leadership performance was assessed only as 3.0, or "Meets Standards." As such, the performance traits that the RS assigned to Petitioner did not necessarily support her current recommendation. The Minority believed it likely that the RS's current recommendation may have been influenced by the false premise of Petitioner's claimed injustice.

MINORITY RECOMMENDATION:

In view of the above, the Minority of 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.

4/6/2024

[REDACTED]

Executive Director

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

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority’s conclusion and therefore direct the relief recommended by the Majority above.)

___ MINORITY Recommendation Approved (Deny Relief – I concur with the Minority’s conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

[REDACTED]

Assistant General Counsel (M&RA)