



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

[REDACTED]  
Docket No. 744-24  
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) BCNR Docket No. NR20190008615 Decision Document of 30 June 2020

- Encl:
- (1) DD Form 149 w/enclosures
  - (2) Evaluation Report & Counseling Record (E1-E6) for the reporting period 16 November 2007 to 15 November 2008
  - (3) Evaluation Report & Counseling Record (E1-E6) for the reporting period 16 November 2011 to 15 November 2012
  - (4) Evaluation Report & Counseling Record (E1-E6) for the reporting period 16 November 2012 to 15 March 2013
  - (5) Certificate of Release or Discharge from Active Duty (DD Form 214)
  - (6) Immediate Reenlistment Contract (NAVPERS 1070/601), 15 March 2013
  - (7) Preseparation Counseling Checklist (DD Form 2648) prepared 26 November 2012
  - (8) CNPC (PERS 836) 7220 Ser PERS-836/012 Memo, subj: Correction of Naval Records ICO [Petitioner], 14 October 2020
  - (9) CNPC (PERS 3C) 1610 PERS-32 Memo, subj: [Petitioner], 14 February 2024
  - (10) CNPC (PERS 803) 1430 PERS 8031/063 Memo, subj: Request for Advisory Opinion ICO [Petitioner], 15 February 2024
  - (11) Petitioner's Promotion History
  - (12) CNPC (PERS 313) 1000 PERS-313 Memo, subj: Advisory Opinion for NR20240000744, 22 February 2024
  - (13) Administrative Remarks (NAVPERS 1070/613), dated 7 March 2013

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 the following relief:

- a. Direct a Special Selection Board (SSB) be convened to consider Petitioner for promotion to E-7;
- b. If appropriate, retire Petitioner in the paygrade E-7;
- c. Allow Petitioner to supplement the gap period in his service record – March 2013 to February 2018 – with narrowly tailored forms of documentation in order to provide for qualitative or quantitative observed period;

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d. Direct Navy Personnel Command (NPC) to correct the remaining uncorrected Evaluation Reports & Counseling Records (EVALs)<sup>1</sup>;

e. Direct NPC to remove and/or correct all previously contested materials and documentation from Petitioner's Official Military Personnel File (OMPF) that are consistent with the prior directive from reference (b)<sup>2</sup>;

f. Direct NPC to correct Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) to accurately reflect the relief granted by reference (b)<sup>3</sup>; and

g. Direct NPC to provide the Defense Finance and Accounting Service (DFAS) with documentation reflecting Petitioner's correct retirement date<sup>4</sup>.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 9 May 2024, and pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

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

b. On 9 April 2020, the Board considered BCNR Docket No. 8675-19, a case remanded to the Board by the United States Court of Federal Claims. The Board determined that "the repeated and fundamental flaws in the administration of the [Physical Fitness Assessment] programs, specifically the [Body Composition Assessment (BCA)] portion, by Petitioner's commands in 2008 and 2010 to 2012 constituted material error because the commands repeatedly deviated from established regulations." In the interest of justice, the Board granted Petitioner's requested relief which included removal of BCA failures from Petitioner's OMPF, Physical Readiness Information Management System (PRIMS), and the EVALs specifically noted by Petitioner. Additionally, the Board determined it was in the interest of justice to rescind Petitioner's involuntary separation due to weight control failure and remove it from his record. The Board further determined the only appropriate relief, given the facts and circumstances of Petitioner's situation, was to correct the injustice by granting Petitioner constructive credit to attain 20 years of active service to provide him sufficient time for retirement. See reference (b).

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<sup>1</sup> The following EVALs require modification: (1) Periodic EVAL for the reporting period 16 November 2007 to 15 November 2008; (2) Periodic EVAL for the reporting period 16 November 2011 to 15 November 2015; and (3) Detachment of Individual EVAL for the reporting period 16 November 2012 to 15 March 2013. See enclosures (2) through (4).

<sup>2</sup> Petitioner provided a detailed list of documents to remove from OMPF. See enclosure (1).

<sup>3</sup> In his statement, Petitioner provided the following amplification to his request to correct his DD Form 214 at enclosure (5): 1) Modify Block 11 to add five years to each NEC; 2) Remove "Separation Payment - \$32,127.18 - Disbursing Officer Symbol 8371" from Block 18; and 3) Modify Blocks 19a/19b to reflect "Road" vice "Board."

<sup>4</sup> Exhibit 2 of enclosure (1) contains three documents reflecting the incorrect retirement date of "28 February 2020."

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c. In keeping with reference (b), Petitioner's involuntary separation was rescinded; an immediate reenlistment contract (NAVPERS 1070/601)<sup>5</sup>, operative on 15 March 2013 for a term of five years, was executed; and Petitioner was transferred to the Fleet Reserve, after completion of 20 years of active service<sup>6</sup>. Additionally, the EVALs Petitioner specifically noted in his request for relief were modified in accordance with reference (b).

d. Petitioner contends he should be granted a SSB due to the removal of the "exceptionally negative information" from his OMPF that "effectively lifts his prior barrier for advancement consideration." He further contends the SSB request should, at most, cover Chief/E-7 PSBs from Fiscal Year (FY) 2010 to 2018. If selected by a SSB, Petitioner contends he should be retired in the new rank. Additionally, Petitioner compels the Board to direct NPC to complete the reference (b) required changes, to include corrections to the stated EVALs, removal of documents inconsistent with reference (b)<sup>7</sup>, modifications to the newly issued DD Form 214, and correction to the Immediate Reenlistment Contract dated 15 March 2013. Lastly, despite numerous attempts by Petitioner to have the obvious error corrected<sup>8</sup>, NPC has failed to provide DFAS with Petitioner's corrected retirement date by simply providing a corrected letter. See enclosure (1).

e. By memorandum of 14 February 2024, PERS-32 issued an advisory opinion (AO) noting it had made the EVAL corrections previously directed by reference (b) but it has no objection to making the currently requested changes to the reports "if directed by BCNR." Further, the AO states PERS-32 has no objection to placing a memorandum in Petitioner's record to maintain continuity and cover the gap between the time period mentioned "but only if directed by BCNR." See enclosures (2) through (4) and (9).

f. By memorandum of 15 February 2024, PERS-803 provided an AO recommending approval of Petitioner's request for a SSB<sup>9</sup> due to the relief granted in reference (b), which removed Petitioner's promotion ineligibility for promotion to Chief Petty Officer. See enclosure (10).

g. By memorandum of 22 February 2024, PERS-313 provided an AO addressing the derogatory material remaining in Petitioner's OMPF after issuance of reference (b). The AO stated that "[d]ue to an error in processing the original BCNR approval, not all actions were completed." In an effort to complete Petitioner's requested purge, PERS-313 took action to

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<sup>5</sup> However, the Immediate Reenlistment Contract at enclosure (6) contains an error requiring correction in the "Oath of Enlistment" section. Specifically, the name typed into the blank where Petitioner's name should be is another individual's name.

<sup>6</sup> However, the documents provided to DFAS (Exhibit 2 of enclosure (1)) reflected the incorrect Fleet Reserve date of 28 February 2020.

<sup>7</sup> In addition to the documents listed by Petitioner in enclosure (1), the Board also identified Enclosure (7), a Preseparation Counseling Checklist, as a document inconsistent with reference (b).

<sup>8</sup> Enclosure (8), the Fleet Reserve Authorization letter of 14 October 2020, NPC (PERS 836) incorrectly states Petitioner was transferred to the Fleet Reserve effective "28 February 2020."

<sup>9</sup> The PERS-803 AO does not specify which Fiscal Years should be covered by the AO. PERS-80B provided Petitioner's promotion history which indicates he was eligible for the FY 2012 Active Duty E-7 Promotion Selection Board prior to his now-rescinded involuntary separation. See enclosure (11).

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remove the requested documents, with the exception of the Page 13 dated 7 March 2013, which the AO does not address. See enclosures (12) and (13).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting partial relief. The Board, relying on reference (b) and the NPC AO at enclosure (10), determined a SSB for consideration for promotion to E-7 should be directed for the FY 2012 PSB, which is the first PSB he was eligible for but not selected by, and all subsequent PSBs until his retirement on 28 February 2018. However, the Board determined an exception to policy, that would allow Petitioner to supplement the "gap period" in his service record with "narrowly tailored forms of documentation," was not warranted. The Board, noting Petitioner did not provide copies of his proposed "narrowly tailored" documentation, was unwilling to grant an exception to policy that would allow Petitioner to build his own record for consideration by the SSB, especially without an opportunity to review the proposed documentation. Lastly, the Board deferred consideration of Petitioner's request to be retired as an E-7 until a SSB determination warranted it.

The Board carefully reviewed Petitioner's OMPF for documents requiring modification and removal and determined the Page 13 dated 7 March 2013, at enclosure (13), which discusses involuntary separation pay, should be removed in keeping with reference (b). Further, the Board noted Petitioner's OMPF contains a "Preseparation Counseling Checklist" (see enclosure (7)) that should be removed in keeping with reference (b). Lastly, the Board noted the error on enclosure (6), and determined the contract's Oath of Enlistment portion requires correction.

The Board carefully reviewed the EVALs and the specific modifications requested by Petitioner and, relying on the PERS-32 AO, determined the modifications should be made in keeping with reference (b). Further, the Board determined the interests of justice warranted creation of a memorandum to maintain continuity and cover the gap created by Petitioner's reenlistment period of March 2013 through February 2018.

The Board carefully reviewed Petitioner's request to modify his DD Form 214. As directed by reference (b), Petitioner's primary NEC 8403 requires adjustment to include the additional five years between 2013 and his retirement on 28 February 2018. However, the Board determined the remaining NECs should not be adjusted to reflect additional time. Additionally, the Board approved the redaction of language in block 18 and the correction of the error to Petitioner's address in blocks 19a and 19b.

Lastly, the Board noted the original mistake made on the PERS-836 correspondence to Petitioner and DFAS at enclosure (8), regarding Petitioner's transfer to the Fleet Reserve, is an error that requires immediate correction.

## RECOMMENDATION

In view of the above, the Board recommends the following corrective action.

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NPC convene a SSB to consider Petitioner for promotion to Hospital Corpsman Chief Petty Officer for fiscal years 2012 to 2018.

Petitioner's record be corrected by removing the Page 13 dated 7 March 2013 at enclosure (13) and the Preseparation Counseling Checklist at enclosure (7).

Petitioner's Immediate Reenlistment Contract at enclosure (6) be corrected to reflect his name in the Oath of Enlistment.

Petitioner's EVALs for the following reporting periods be modified as follows:

- a. 16 November 2007 to 15 November 2008: Block 36: Change to "3.0 Meets Standards"
- b. 16 November 2011 to 15 November 2012:
  - 1) Block 20: Redact "FF"
  - 2) Block 36: Change to "3.0 Meets Standards"
  - 3) Block 43: Redact ""Significant Problems" Member has failed 2 PFA's during this reporting period."
  - 4) Block 45: Change to "Promotable"
  - 5) Block 47: Change to "Recommended"
- c. 16 November 2012 to 15 March 2013:
  - 1) Block 20: Redact "N"
  - 2) Block 36: Change to "3.0 Meets Standards"
  - 3) Block 40: Recalculate Individual Trait Average
  - 4) Block 43: Redact "This eval is being submitted due to administrative separation from the Navy" and "[Petitioner] is being administratively separated from the Navy due to Discharge Code: GCR (Weight Control Failure)."
  - 5) Block 45: Change to "Promotable"
  - 6) Block 47: Change to "Recommended"

Petitioner's record be corrected by adding a memorandum to maintain EVAL continuity and cover the gap created by Petitioner's reenlistment period of March 2013 through February 2018.

NPC is directed to provide corrected Fleet Reserve Authorization documentation to DFAS

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reflecting Petitioner's transfer to the Fleet Reserve on 28 February 2018.

Petitioner's record be corrected by modifying the DD Form 214 as follows:

- 1) Block 11: modify NEC 8403 to reflect Petitioner maintained the NEC until retirement
- 2) Block 18: Redact the sentence "Separation Payment -- \$32,178.18 -- Disbursing Office Symbol 8371."
- 3) Blocks 19a/19b: Change "BOARD" to read "ROAD"

Note: Navy Personnel Command will issue a DD Form 215 or a new DD Form 214 whichever one they deem appropriate.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

5/29/2024

