



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

█
Docket No: 3661-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█ USMC

Ref: (a) 10 U.S. Code
(b) ALNAV 098/20
(c) Executive Order 13598 of 27 January 2012
(d) ALNAV 088/23
(e) SECNAVINST 1420.3

Encl: (1) DD Form 149 w/enclosures
(2) CMC 1420 MMPR-1 Memo, subj: Nullification of Selection, 2 May 23
(3) CMC Action Memo, subj: Extension of Promotion Eligibility Period ICO [Petitioner], 18 March 2022
(4) ASN (M&RA) Action Memo, subj: Extension of Promotion Eligibility Period ICO [Petitioner], 22 March 2022
(5) USD (P&R) Memo, subj: Promotion Eligibility Period Extension for [Petitioner], 18 April 2022
(6) CMC 1920 JPL Memo, subj: Termination of Administrative Proceedings ICO [Petitioner], 13 October 2023
(7) CMC (JPL) 1420 JPLP Memo, subj: Notification of Promotion Withhold and Possible Removal from the Fiscal Year 2025 USMC Colonel Promotion List, 8 November 2023
(8) Petitioner 1000 █ Memo, subj: Response to Promotion Withhold Notification, 13 November 2023
(9) CG, █ 1000 █ Memo, subj: FY25 Colonel Promotion Selection ICO [Petitioner], undated
(10) CMFC 1420 SJA Memo, subj: FY25 Colonel Promotion Selection ICO [Petitioner], 22 November 2023
(11) Congress.gov entry
(12) █ subj: Promotion Authority Message ICO [Petitioner], DTG 250817Z MAR 24

1. Pursuant to the provisions of section 1552 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. Backdate Date of Rank (DOR) for lineal, pay, and retirement purposes to 1 January 2022, the original DOR based on his original Fiscal Year 2022 (FY22) selection to Colonel;

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- b. Receive all back pay and allowance for the 1 January 2022 promotion, as well as associated compounding interest for the pay shortages since that date; and
- c. Expunge enclosure (2), the nullification of his FY22 selection for promotion to Colonel.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 June 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. Petitioner was selected for promotion to Colonel by the FY22 Marine Corps Active Duty Colonel Promotion Selection Board (PSB). On 5 November 2020, the promotion list was approved and then announced by reference (b) on 18 November 2020. Petitioner was projected to promote on 1 January 2022. However, his promotion was withheld from the nomination scroll to allow for review of potentially adverse matters with his promotion eligibility period (PEP) expiring on 1 May 2022. On 18 April 2022, the Secretary of Defense approved Petitioner for a PEP extension, changing the expiration to 1 May 2023¹. See enclosures (2) through (5).

- c. Having not promoted to Colonel by the approved extension date of 1 May 2023, Petitioner's selection was nullified by operation of law and no further action was taken on his FY22 selection. Petitioner was notified, on 2 May 2023, of the nullification and informed he was now considered to have failed selection from the FY22 Marine Corps Colonel PSB. See enclosure (2).

- d. On 13 October 2023, the Deputy Commandant for Manpower and Reserve Affairs, as the designated Show Cause Authority, directed closure of the underlying administrative proceedings² that formed the basis of Petitioner's name being withheld from the FY22 nomination scroll. Additionally, DC (M&RA) directed that the adverse material concerning the matter not be included in Petitioner's Official Military Personnel File (OMPF). See enclosure (6).

¹ Under section 629(c)(3) of reference (a), unless a 12-month extension is approved by the President of the United States, promotion eligibility expires on the first day of the eighteenth month following the date that the promotion list was approved. In accordance with reference (c), the President delegated this authority to the Secretary of Defense. The authority was reassigned to the Under Secretary of Defense for Personnel and Readiness by SECDEF memorandum of 18 August 2016.

² On 5 September 2022, the Board directed the Commandant of the Marine Corps to remove an Administrative Remarks (Page 11) entry, dated 3 May 2021, from Petitioner's record. A Board of Inquiry (BOI) convened on 20-21 January 2022, which was based on the expunged Page 11, was set aside by DC (M&RA) on 4 January 2023. A second BOI convened 6-7 June 2023 and returned a unanimous finding of no basis.

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e. Petitioner was not eligible for the FY24 Marine Corps Colonel PSB as he was still in a select status by the FY22 Marine Corps Colonel PSB. However, Petitioner was subsequently eligible and selected by the FY25 Marine Corps Colonel PSB. Reference (d), released 7 November 2023, announced the selection. On the following day, Commandant of the Marine Corps (JPL) notified Petitioner his promotion had been withheld based on an allegation of misconduct. Noting the misconduct case had been closed 18 October 2023, JPL notified Petitioner his promotion case would be reviewed to determine whether, pursuant to reference (e) and sections 624 and 629 of reference (a), he was mentally, physically, morally, and professionally qualified for promotion. See enclosure (7).

f. On 13 November 2023, Petitioner responded to the promotion withhold notification requesting his name be returned to the FY25 Colonel promotion list. He noted that since the PSB selected him and upon the closure of his administrative case by the DC (M&RA), there was nothing adverse in his OMPF “that would cause the board to change its mind.” He pointed out, in fact, a Joint Service Achievement Medal (impact award) had been added as well as a Combat Fitness Test score of 288, up 19 points from the 268 considered by the FY22 PSB. See enclosure (8).

g. By his endorsement of Petitioner’s 13 November 2023 letter, Commanding General, [REDACTED], stated his full support of Petitioner’s name being returned to the FY25 Colonel promotion list as well as the backdating of his promotion to 1 January 2022 in accordance with section 629 of reference (a) and reference (e). See enclosure (9).

h. By memorandum of 22 November 2023, Commander, Marine Forces Command, recommended Petitioner’s name be returned to the FY25 Colonel promotion list. See enclosure (10).

i. On 23 March 2024, Petitioner’s nomination was confirmed by the Senate, and on 25 March 2024, the Marine Corps authorized Petitioner’s promotion with a DOR of 1 January 2024. See enclosures (11) and (12).

j. Petitioner contends his FY22 promotion selection was delayed and subsequently nullified by operation of law due to the untimely processing of an allegation of misconduct. After a June 2023 BOI found no basis for the misconduct allegation, DC (M&RA) closed the administrative case and directed that no adverse material be placed in Petitioner’s OMPF. Further, Petitioner contends that throughout the lengthy adjudication process, his performance, which has been well documented by various supervisors, contains glowing remarks in his fitness reports, promotion recommendations, and numerous recommendations from General Officers. Additionally, Petitioner has been awarded a Joint Service Achievement Medal (impact award) by the Director of the National Security Agency (NSA) for his work leading a Joint, Interagency Team on a classified project and a Defense Meritorious Service Medal from his tour at the NSA which covers the entire time in question. Petitioner contends his DOR should be backdated to his original selection by the FY 22 PSB. See enclosure (1).

k. Reference (d) discusses eligibility of officers removed from a promotion list:

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If an officer is recommended for promotion by the next PSB convened for that officer's grade and competitive category and the officer is promoted, the SECNAV may, under [section 1552 of reference (a)], upon such promotion, grant the officer the same date of rank, the same effective date for pay and allowances for the grade to which promoted, and the same position on the ADL or RASL as the officer would have had if the officer's name had not been removed from the promotion list.

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded Petitioner's request warrants relief.

The Board, relying on the supporting documentation provided by Petitioner, his documented performance and achievements, and the guidance in reference (d), determined it was in the interests of justice to backdate Petitioner's DOR to 1 January 2022 and "grant [Petitioner] the same date of rank, the same effective date for pay and allowances for the grade to which promoted, and the same position on the ADL or RASL as [Petitioner] would have had if [his] name had not been removed from the promotion list."

RECOMMENDATION

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

Petitioner's naval record be corrected by adjusting his DOR and Lineal Control Number (LCN) in the grade of Colonel to 1 January 2022, the DOR and LCN he would have received had his selection by the FY22 Marine Corps Colonel PSB not been nullified by operation of law.

Petitioner's naval record be corrected by removing enclosure (2), the Nullification of Selection letter dated 2 May 2023.

The Defense Finance and Accounting Service (DFAS) complete an audit of Petitioner's records and make payment of any money that Petitioner may be entitled.

That 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. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/11/2024

