



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

██████████  
Docket No. 9257-24  
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) Title 10 U.S.C. § 1552  
(b) Manual for Courts-Martial  
(c) BUPERSINST 1610.10E  
(d) SECNAVINST 1402.1

Encl: (1) DD Form 149 w/attachments  
(2) CO, NMRTC ltr 1611 Ser 00/00SM315, subj: PLOR, 10 Jun 20  
(3) CO, NMRTC ltr 1611 Ser 00/00SM343, subj: Report of NJP, 22 Jun 20  
(4) Petitioner ltr, Undated  
(5) CO, NMRTC ltr 1611/Ser 00/00SM380, 8 Jul 20  
(6) CO NMFA ltr 1611 Ser 00/J1/20L190, 14 Jul 20  
(7) Fitness Report & Counseling Record for the reporting period 1 Feb 20 to 31 Jan 21  
(8) Fitness Report & Counseling Record for the reporting period 1 Feb 21 to 18 Jun 21  
(9) BOI Report, 19 Aug 21  
(10) CO, NPC (PERS-834) ltr 1920 Ser 834/496, subj: Status in the U.S. Navy, 27 Sep 21  
(11) NPC memo 1610 PERS-32, 18 Sept 24  
(12) NPC memo 1402 PERS-80/0493, 18 Sept 24  
(13) PERS-00J memo, 12 Nov 24

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 that his naval record be corrected by redacting the Fitness Report & Counseling Record (Fitness Report) for the reporting periods 1 February 2020 to 31 January 2021 and 1 February 2021 to 18 June 2021. Petitioner also requested removal of his Failures of Selection (FOS) by the Fiscal Year (FY) 2024 and 2025 Active Duty Promotion Selection Boards (PSBs) or, if untenable, that a Special Board for Continuation on Active Duty be convened.

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 21 January 2025 and, pursuant to its regulations, determined that 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.

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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 20 May 2020, pursuant to reference (b), the Commanding Officer (CO) imposed Non-Judicial Punishment (NJP) for violation of Articles 92 and 107 of the Uniform Code of Military Justice (UCMJ). Specifically, for unauthorized travel outside of the United States without prior approval and for falsifying leave information with the intent to deceive. Petitioner acknowledged receipt of the Report of NJP and his intent not to submit a statement. As punishment, Petitioner received a Punitive Letter of Reprimand (PLOR). Petitioner signed the PLOR and indicated he did not intend to submit an appeal. Petitioner's chain of command and forwarded the Report of NJP to Navy Personnel Command (PERS 834) recommending Petitioner not be detached for cause and further determining that his misconduct warrants promotion delay or removal, if on a promotion list. Enclosures (2) through (6).

c. Petitioner was issued a Detachment of Individual/Regular Fitness Report for the period 1 February 2020 to 31 January 2021 while serving as a Staff Nurse for Naval Medical Readiness Training Center, [REDACTED]. Petitioner was marked "Below Standards" in Blocks 34 and 35 for Command or Organizational Climate/Equal Opportunity and Military Bearing/Character. Comments under Block 41 further stated, "Significant Problems. While on leave, actions deterred from good order and discipline; member lied about international travel after leaving the country during the height of the COVID-19 pandemic. Failure to adhere to Navy's standards of behavior and its core values has resulted in a status of not recommended for promotion or retention." Petitioner signed the fitness report and indicated that he did not intend to submit a statement. Enclosure (7).

d. Petitioner was issued a Detachment of Reporting Senior/Regular Fitness Report for the period 1 February 2021 to 18 June 2021 while serving as a Staff Nurse for Naval Medical Readiness Training Center, [REDACTED]. Petitioner was marked "Below Standards" in Blocks 34 and 35 for Command or Organizational Climate/Equal Opportunity and Military Bearing/Character. Comments under Block 41 further stated, "Pending Separation. As a result of prior legal action, adjudication resulted in determination of officer not being suitable for retention. Dedicated nurse with passion for patient care pending separation from the Navy." Petitioner signed the fitness report and indicated that he did not intend to submit a statement. Enclosure (8).

e. On 19 August 2021, a Board of Inquiry (BOI) determined by vote of 3-0 that a preponderance of the evidence supports the basis of separation for misconduct. However, on 27 September 2021, Petitioner was notified by PERS-834 that pursuant to reference (c), the Show Cause Authority indicated Petitioner was required to show cause for retention, and although the reasons for separation were supported by the evidence, the BOI recommended Petitioner be retained for naval service. Enclosures (9) and (10).

f. Petitioner asserts that, pursuant to reference (c), RS's are directed to "take reasonable care to avoid comments that may later be invalidated by official findings." Petitioner contends that

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these fitness reports were completed before an official decision was made by the 19 August 2021 BOI, and that it had already been decided that he was not suitable for retention, in a non-promotion status, and being administratively separated prior to the results of the BOI, which determined although reasons specified for misconduct are supported by the evidence, separation for cause was not warranted. Petitioner further contends that due to erroneous and misleading information in his record, it has affected the Promotion and Continuation Board's decisions, leading to his FOS in FY24/FY25 and not being offered continuation in the naval service.

g. By memorandum, Navy Personnel Command (PERS-32) provided an advisory opinion (AO) for the Board's consideration, recommending Petitioners requested for relief be partial granted. In this regard, the AO noted pursuant to reference (c), general comments allow the RS to provide significant comments when they are a significant part of the member's duties or displays particularly strong or weak performance. Also, pursuant to the reference, general commenting on misconduct further states that comments may be included on misconduct whenever the facts are clearly established to the RS's satisfaction.

Concerning the report ending 31 January 2021, the AO noted the RS gave justification of the 1.0 performance traits and "Significant Problems" promotion recommendation by stating member failed to adhere to the Navy's standard of behavior and its core values by lying about international travel during the pandemic. Thus, the AO determined the report ending 31 January 2021 is valid and recommended no changes.

However, concerning the report ending 18 June 2021, the AO noted reference (c), states not to comment on judicial on non-judicial proceedings that are not concluded. The AO further noted the results of the BOI occurred after the ending date of the report. Thus, the AO recommended changes to the report ending 18 June 2021<sup>1</sup> due to the RS not adhering to policies concerning comments. Enclosure (11).

h. By memorandum, Navy Personnel Command (PERS-80) provided an AO for the Board's consideration, recommending Petitioners request be denied. In this regard, the AO determined Petitioner was properly considered and not selected by the FY24 and FY25 Navy Lieutenant Commander (LCDR) Staff Corps (Nurse Corps) PSBs, in accordance with the approved precepts and convening orders. The AO determined the PSB processes used to reach the determination were lawful and according to relevant policies. Furthermore, the AO determined Petitioner was properly considered and not selected by the FY25 LCDR Continuation Selection Board (CSB). Finally, the AO determined a review of Petitioner's record indicates that his record in its entirety was substantively complete and properly considered by the board and the board did not select him for continuation. Further, the AO indicated Petitioner had the opportunity to communicate to the board, however, he elected not to do so and failed to avail himself to the available methods. Lastly, the AO noted competition for promotion is extremely keen and historically there are always more quality eligible officers than the board is authorized to select. Further, board members are tasked with selecting those officers a majority evaluates to be "best and fully qualified" for promotion. Thus, the AO concluded that pursuant to reference (d), a Special Board was not warranted. Enclosure (12).

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<sup>1</sup> The AO indicates the ending date of 18 June 2018, however, the Board determined this was purely an administrative error and should have read 18 June 2021.

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i. By memorandum, the Office of Legal Counsel (PERS-00J) provided an AO for the Board's consideration and determined the Board could grant partial relief concerning the fitness report for the period ending 18 June 2021. Specifically, the AO determined there were two misstatements of fact in the report at enclosure (8). Specifically, the line that states, "PENDING SEPARATION. As a result of prior legal action; adjudication resulted in determination of officer not being suitable for retention" is factually incorrect. The AO further noted that the final summation also mentioning separation could also be removed as factually incorrect. However, the AO also notes that Petitioner did not avail himself of his ability to provide comment on the fitness reports pursuant to reference (b).

Concerning Petitioner's FOS and request for a special board, the AO noted there is no indication Petitioner followed relevant Navy policies for requesting a special selection board (SSB); thus, the AO determined Petitioner's request for an SSB not ripe for the Board's consideration. Finally, the AO concluded Petitioner's speculation that the lines regarding his pending separation were the cause of his failure to select is without merit. In this regard, the AO noted an NJP and confirmed finding at a BOI of serious misconduct was, more likely than not, the cause of his failure to select for promotion. Further, the petitioner also failed to show he addressed this issue with a letter to the board or that he complained to his commanding officer regarding this issue in his fitness report. Thus, the AO determined petitioner should not be granted a special selection board as a remedy, even if he files for one as he failed to address his concerns when he had plenty of notice of the same after his BOI in August of 2021. Enclosure (13).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, in regard to the fitness report ending 18 June 2021, the Board substantially concurred with the PERS-00J AO that there were two factual misstatements that merit redaction.

Notwithstanding the recommended corrective action below, the Board determined no other relief was warranted.

First, the Board concluded that the BOI's findings do not invalidate other administrative actions or the Reporting Senior's (RS) independent authority regarding misconduct. The Board considered Petitioner's request for removal of the contested fitness reports. However, the Board substantially concurred with the PERS-32 and PERS-00J AOs that the fitness report for the period ending 31 January 2021 is valid, based on substantiated misconduct and subsequent Non-Judicial Punishment (NJP). In this regard, the Board noted that the RS justified the 1.0 performance traits and promotion recommendation.

Second, regarding Petitioner's request for removal of all FOS and the convening of a SSB or CSB, the Board substantially concurred with the PERS-80 AO and determined the requested relief is not warranted. Petitioner was properly considered and not selected by the FY24 and FY25 Navy LCDR Staff Corps (Nurse Corps) PSBs, in accordance with the approved precepts and convening orders. Additionally, the Board determined Petitioner was properly considered

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and not selected for continuation by the FY25 LCDR CSB. Petitioner had the opportunity to communicate to the board; however, he elected not to do so. Thus, the Board determined an SSB or CSB are not warranted.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the following from Block 41 of enclosure (8), his fitness report for the reporting period ending 18 June 2021, "PENDING SEPARATION. As a result of legal action; adjudication resulted in determination of officer not being suitable for retention," and "...pending separation from the Navy."

No further relief be granted.

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 Regulations, 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.

2/27/2025

