



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

[REDACTED]  
Docket No. 11139-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,  
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/attachments  
(2) Disposition of Offense(s), 8 Apr 22  
(3) CO, [REDACTED], subj: Letter of Instruction, 11 Apr 22  
(4) Fitness report for the report period 1 Oct 21 to 28 Apr 22  
(5) BCNR ltr [REDACTED] Docket. No 1789-24, 14 May 24  
(6) [REDACTED] ltr 1610, 22 Oct 24  
(7) [REDACTED] ltr 1610, 22 Oct 24  
(8) NPC Memo 1610 PERS-32, 21 Nov 24  
(9) NPC Memo 1402 PERS-80/0084, 5 Mar 25

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 (Board), requesting that his naval record be corrected by removing the fitness report for the reporting period 1 October 2021 to 28 April 2022, and all failures of selection (FOS). Petitioner also requests Special Selection Boards (SSBs) for Fiscal Years (FY) 2023/2024/2025.

2. The Board, consisting of [REDACTED], and [REDACTED], 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.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds the following:

a. On 8 April 2022, Petitioner's Commanding Officer (CO) found Petitioner not guilty of Article 133, Uniformed Code of Military Justice (UCMJ) at a non-judicial punishment hearing. While the CO dismissed the NJP with a warning, he indicated that a LOI would be issued along with a request to PERS-414 for immediate reassignment. Enclosure (2).

b. On 11 April 2022, Petitioner was issued a LOI documenting an accusation of academic dishonesty. Specifically, during the grading of a final exam, instructors became suspicious noting that several of Petitioner's answers in the short answer portion of the exam were very close to, if not identical, to the instructional publications and other students in the class. The Investigating Officer (IO) for the preliminary inquiry concluded the preponderance of evidence indicated dishonesty. The CO concluded that evidence could support a finding that Petitioner was guilty; however, he took into account scores from other examinations and did not believe that Petitioner cheated. Even though he believed Petitioner did not cheat, he found that Petitioner exercised poor judgment based on Petitioner's written account of the incident. Enclosure (3).

c. Petitioner received a Detachment of Reporting Senior/Regular fitness report for the reporting period 1 October 2021 to 28 April 2022. Block 41, the Reporting Senior (RS) comment states, "During the reporting period I issued [Petitioner] a Letter of Instruction in response to an allegation of academic dishonesty that was made by instructors . . ." "At Captain's Mast, I assessed a preponderance of the evidence supported a guilty finding under UCMJ Article 133 but elected not to impose NJP. His account of his actions lead me to believe he exercised failures in judgment WRT to the handling of course testing material and have reduced my confidence in his judgment." Enclosure (4).

d. Petitioner previously applied to this Board to remove the fitness report in question along with FOS. On 23 April 2024, this Board considered Petitioner's contentions and denied relief. In making their decision, the Board received advisory opinions (AOs) for consideration and determined that RSs are authorized to comment on misconduct whenever the facts are clearly established to the RS' satisfaction. Additionally, RSs are charged with commenting on the performance or characteristics of each member under their command and have the discretionary authority to determine what material will be included in a fitness report. The contested fitness report brought Petitioner's character into question and promotion board members use their judgment to determine if candidates are fully qualified based upon the totality of the record and the language in the convening order. Enclosure (5).

e. On 22 October 2024, Petitioner's RS submitted Letter Supplements to revise enclosure (4) by removing the "NJP language to match BUPERSINST 1610 to match NAVPERS 1626/7 selection of DISMISSED WITH WARNING (Not considered NJP)." In a separate Letter Supplement with the same date, the RS revised block 41 by removing the "2nd paragraph: 'During the reporting period..'" Enclosures (6) and (7).

f. In Petitioner's current application, he again contends there is information in the enclosure (4) that should not be there. He argued that the EVALMAN states not to include comments regarding NJP unless there has been a finding of guilty or a punishment awarded. He also contends the Court Memorandum states the CO found him not guilty. He claimed the LOI was awarded after the NJP only to document what happened because it was not supposed to be included in the fitness report. Moreover, the information contained in the fitness report is prohibiting him from advancing to Chief Warrant Officer (CWO) 3. As new evidence, Petitioner provided enclosures (6) and (7), the RS' correspondence to the FY 2025 promotion selection board (PSB). Enclosure (1).

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USN,  
[REDACTED]

g. The AO furnished by PERS-32 noted that the original RS may submit supplementary material within two years after the ending date of the report; however, the report in question exceeds this period and changes are not permitted unless otherwise directed by the Board. Enclosure (8).

h. The AO furnished by PERS-80 recommends that the Board disapprove Petitioner's request and determined that an SSB is not warranted. In this regard, the AO noted that Petitioner was properly considered and not selected for promotion by the FY 2023 Navy Active-Duty CWO3 PSB. The AO explained that the FY 2023 convening order defined "fully qualified," specifically highlighting and describing character, and Petitioner's character was brought into question in the contested fitness report. The AO determined that the CWO3 PSB is not administrative in nature; the board members use their judgment to determine if the candidates are fully qualified based upon the totality of the record and the language in the convening order. The AO concluded the PSB's determination and the board processes used to reach the determination were lawful and in accordance with policy. Enclosure (8).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial corrective action. Specifically, in consideration of the totality of the evidence and purely as a matter of equity, the Board determine that an exception to policy should be granted by permitting PERS-32 to accept the RS's Letter-Supplement for inclusion in Petitioner's record.

Notwithstanding the recommended corrective action below, the Board affirms its previous determination that Petitioner's fitness report is valid as written and filed. The Board determined that according to the EVALMAN Petitioner's RS was authorized to comment on misconduct based on facts are clearly established to his satisfaction. Additionally, RSs are charged with commenting on the performance or characteristics of each member under their command and have the discretionary authority to determine what material will be included in a fitness report. Further, the Board concurred with the PERS-80 AO that entitlement to an SSB is not warranted. The Board noted that Petitioner's RS submitted correspondence to the PSB President for consideration, the promotion board members had access to the RS's letter for consideration, and still Petitioner was not selected for promotion. The Board determined that Petitioner's record was properly considered and found no error in the PSB process.

## RECOMMENDATION

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

Petitioner's naval record be corrected by including enclosures (6) and (7), the 22 October 2024 Letter-Supplements into Petitioner's official record.

No further corrections to Petitioner's 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-entitled matter.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USN,  
[REDACTED]

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.

2/12/2025

