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

FOIA No. 2017004552
22 March 2017

THE WASHINGTON POST
ICO CRAIG WHITLOCK
1301 K STREET NW
WASHINGTON DC 20071-7403

Dear Mr. Whitlock:

This is in reference to your request, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, tracking numbers DON-NAVY-2017-004552, for all records maintained by the Board for Correction of Naval Records (BCNR) regarding applications, appeal, petitions, or requests submitted by Read Admiral Brian L. Losey (USN retired) since October 2016.

In this regard, all responsive records within the BCNR's cognizance as release authority are enclosed. Pursuant to exemption 5 U.S.C. § 552 (b)(6), names and other personally identifiable information of third parties have been redacted where indicated. Specifically, the social security numbers, addresses, and contact information of third parties have been withheld, as they constitute protected personally identifiable information and, therefore, are not a record within the meaning of 5 U.S.C. § 552a (a)(4), nor do they "pertain" to you within the meaning of subsection (d)(1).

Certain portions of the BCNR file contain records that are not within our authority to release, as we are not the custodian of such records. Responsive records are controlled by the Navy Personnel Command (NPC), the Office of the Chief of Naval Operations, FOIA/PA Program Office (DNS-36), and the Department of Defense Inspector General (DoDIG). Per the FOIA guidelines, I referred your request to the record release authorities for direct reply to you. The point of contact at NPC is Mr. David German, available at (901)874-3165. The point of contact for DNS-36 is Ms. Robin Patterson, available at (202)685-6545. The point of contact for DoDIG is Mr. Eric Powers, available at DoDIGFOIA@dodig.mil.

You may appeal this response to the Department of the Navy, Office of the Judge Advocate General. An appeal must be made in writing and sent to:

Office of the Judge Advocate General
General Litigation Division (Code 14)
1322 Patterson Avenue, SE, STE 3000
Washington Navy Yard, DC 20374.

Any appeal must be postmarked within 60 calendar days from the date of this letter and include a statement explaining why the appeal should be granted, a copy of this letter, and a copy of the

original request. Both the appeal letter and the envelope should bear the notation, "Freedom of Information Act Appeal." Failure to include with this information could result in the Department's rejection of your appeal.

If further inquiry is required regarding this matter, please contact Ms. Clemons, at Karen.clemons@navy.mil.

Sincerely,

ELIZABETH A. HILL
Executive Director

Enclosure: BCNR ltr Docket No. 10278-16 dtd 11 Jan 17

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

[redacted]
Docket No. 10278-16
JAN 1 1 2017

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

Subj: RECORD OF PROCEEDINGS ICO RDML BRIAN L. LOSEY, USN RET, [redacted]

Ref: (a) Title 10 U.S.C. 1552
(b) Title 10 U.S.C. 624
(c) Title 10 U.S.C. 1034
(d) FY 2006 NDAA
(e) SECNAVINST 1420.1B

Encl: (1) DD Form 149 with attachment
(2) DD Form 214 eff 31 Oct 2016
(3) SECNAV ltr dtd 14 Oct 2010
(4) SECNAV ltr dtd 8 Nov 2010
(5) CNP memo dtd 19 Nov 2015
(6) CNP ltr dtd 06 Sep 2012
(7) DUSDI memo dtd 18 Nov 2012
(8) DoDIG 12 122712 017 dtd 15 Jul 2013
(9) RDML Losey ltr to ADM McRaven dtd 5 Feb 2014
(10) DoDIG Report No. 20121205-002863 dtd 4 Nov 2014
(11) DoDIG Report No. 20121205-003439 dtd 23 Dec 2014
(12) SECNAV memo dtd 31 Jul 2015
(13) VCNO ltr dtd 2 Oct 2015
(14) SECNAV memo dtd 14 Oct 2015
(15) CNP ltr 5800 P00F dtd 15 Oct 2015
(16) CNP ltr 5800 CNP dtd 30 Oct 2015
(17) PRB ltr dtd 4 Nov 2015
(18) CNP First endorsement1421 POOF dtd 13 Nov 2015
(19) OJAG memo 1400 Ser 13/1PL1374.15 dtd 23 Nov 2015
(20) U.S. Senate (Committee on Armed Services) ltr dtd 14 Jan 2016
(21) Senator Grassley speech dtd 6 Apr 2016
(22) Congressman Zinke (Congressional Record – House) dtd 13 May 2016
(23) CNP ltr 5400 P00F dtd 6 Jan 2017

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to revise his retirement grade to rear admiral (RADM) (O-8) and authorize back pay for that grade from his RADM statutory promotion date of 1 April 2013 to his retirement date of 01 November 2016, in accordance with reference (b).

2. The Board, consisting of [redacted], reviewed Petitioner's allegations of error and injustice on 10 January 2017 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, 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, finds 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. The Petitioner joined the United States Navy on 9 July 1983. See enclosure (2).

c. On 14 October 2010, the Secretary of the Navy issued the FY-12 Active Duty and Reserve Navy Flag Officer Promotion Selection Board Precept. See enclosure (3).

d. On 8 November 2010, the Secretary of the Navy sent a letter to ADM Walsh with the subject "Order Convening the FY-12 Promotion Selection Board to Consider Officers in the Line of the Active-Duty List of the Navy for Promotion to the Permanent Grade of Rear Admiral". See enclosure (4).

e. On 20 Apr 2011, the Secretary of Defense approved the promotion list. See enclosure (5).

f. In June 2011, the Petitioner stated he took command of Special Operations Command Africa (SOCAFRICA). See enclosure (1).

g. On 14 December 2011, the U.S. Senate confirmed the FY-12 promotion list. See enclosure (5).

h. Flag Officer Management and Distribution were apprised of a DOD investigation after RDML Losey was confirmed but awaiting his promotion date of 1 April 2013. See enclosure (1).

i. On 6 September 2012, in accordance with reference (e), the Chief of Naval Personnel issued a Delay of Appointment to the Petitioner. See enclosure (6).

j. On 18 November 2012, Lieutenant General Palumbo, the Deputy Under Secretary of Defense for Intelligence, completed a command climate survey of SOCAFRICA for General Hamm, Commander, Africa Command. He stated the following: " [redacted]

[redacted]" See enclosure (7).

k. In June 2013, the Petitioner stated he relinquished command of SOCAFRICA and took command of Navy Special Warfare Command. See enclosure (1).

l. On 15 July 2013, (1 of 3) DoDIG Report No. 12-122712-017 showed that Climate Survey claims of suspected wrong-doing were substantiated. Report conclusion: "[redacted]". See enclosure (8).

m. On 5 February 2014, the Petitioner wrote a detailed rebuttal letter to ADM McRaven, Commander, U.S. Special Operations Command, for his consideration in determining any administrative actions. He stated the following: "[redacted]" See enclosure (9).

n. On 04 November 2014, (2 of 3) DoDIG Report No. 20121205-002863 again showed that Climate Survey claims of suspected wrong-doing were substantiated. Conclusion: "[redacted]

[redacted] See enclosure (10).

o. On 23 December 2014, (3 of 3) DODIG Report No. 20121205-003439. DODIG determined Climate Survey claims of suspected wrong-doing were substantiated. Report conclusion: "[redacted]" See enclosure (11).

p. On 31 July 2015, the Secretary of the Navy sent a memorandum to the Chief of Naval Operations stating the following: "[redacted]" See enclosure (12).

q. On 3 October 2015, the Vice Chief of Naval Operations sent a letter to SECNAV stating the following: "[redacted]" See enclosure (13).

r. On 14 October 2015, the Secretary of the Navy issued a memorandum for the Under Secretary of Defense (P&R) stating the following: "[redacted]" See enclosure (14).

s. On 15 October 2015, the Chief of Naval Personnel notified the Petitioner of the following: [redacted] See enclosure (15).

t. On 30 October 2015, the Chief of Naval Personnel issued a letter appointing members to the Promotion Review Board. Promotion Review Boards were developed in response to requirements in the FY-2006 National Defense Authorization Act, which required that substantiated adverse conclusions from official inquiries be furnished to promotion selection boards. In cases when information regarding the inquiry was not available to the promotion selection board, the Promotion Review Board provides an independent review of the information and makes a recommendation on continued suitability for promotion. See enclosure (16) and references (d) and (e).

u. On 4 November 2015, the Promotion Review Board convened. They stated the following: "..[redacted]" See enclosure (17).

v. On 13 November 2015, the Chief of Naval Personnel endorsed the Promotion Review Board's recommendation. See enclosure (18).

w. On 19 November 2015, the Chief of Naval Personnel wrote an Action Memo for the Secretary of the Navy in "[redacted]". The memo stated the following: "[redacted]" See enclosure (5).

x. On 23 November 2015, the Judge Advocate General wrote a memorandum to the Secretary of the Navy stating the following: "[redacted]". See enclosure (19).

y. On 25 November 2015, the Vice Chief of Naval Operations endorsed Chief of Naval Personnel's action memo for the Secretary of the Navy. See enclosure (5).

z. On 30 November 2015, the Chief of Naval Operations endorsed Chief of Naval Personnel's action memo for the Secretary of the Navy. See enclosure (5).

aa. On 14 January 2016, Senators McCain and Reed sent a letter to the Secretary of the Navy stating the following: "[redacted]" See enclosure (20).

ab. On 6 April 2016, Senator Grassley at the floor speech spoke on Admiral Losey Whistleblower Investigation. See enclosure (21).

ac. On 13 May 2016, Congressman Zinke at the floor speech spoke on Admiral Losey. He stated the following: "Madam Speaker, I rise today in support of Rear Admiral Brian Losey, the current commander of Naval Special Warfare Command, our Nations' top U.S. SEAL. He is

entrusted with the honor of commanding all SEALs, all special boat units, and all support staff across this great country an across many theaters." See enclosure (22).

ad. On 1 November 2016, RDML Losey retired. See enclosure (2).

ae. On 23 November 2016, RDML Losey submitted his application for correction of his Naval records. See enclosure (1).

af. On 6 January 2017, a request for information was received from the Director, Flag Officer Management, Distribution and Development. This office responded that "On November 30, 2015, the Chief of Naval Operations signed and forwarded a recommendation to the Secretary of the Navy supporting the promotion of Rear Admiral (lower half) Losey to the rank of rear admiral. To date, this office has not received a final determination from the Secretary of the Navy on this action." See enclosure (23).

CONCLUSION AND FINDINGS

Upon review and consideration of all the evidence of record, the Board finds the existence of errors and/or injustices, and unanimously concludes by a vote of 3-0, that Petitioner's request warrants favorable corrective action.

The Board placed considerable weight Secretary of the Navy's (SECNAV) independent review and determination on 31 July 2015 that there was insufficient evidence to conclude that the Petitioner engaged in any prohibited personnel practices in violation of any applicable whistleblower retaliation and reprisal statutes, regulations, directives, and instructions.

The Board further concurred with the results and findings of the 4 November 2015 Chief of Naval Personnel-directed Promotion Review Board (PRB). The PRB stated that the Petitioner's overall outstanding performance was consistent with the high standards of ethical conduct expected of naval officers. Ultimately, the PRB unanimously opined and determined that the Petitioner was fully qualified for promotion to the grade of Rear Admiral (upper half) (O-8).

The Board also noted that on 19 November 2015 the Chief of Naval Personnel (VADM Moran) determined that the Petitioner was qualified for promotion and met the prescribed exemplary conduct standards, and that the Navy Judge Advocate General (VADM Crawford) opined on 23 November 2015 that the PRB findings and termination of delay were not objectionable.

In view of the foregoing, the Board recommends the following corrective action be taken as set forth below.

RECOMMENDATIONS

That Petitioner's naval record be corrected, where appropriate, to:

a. Immediately suspend and/or terminate any existing or residual delay regarding Petitioner's appointment and promotion to the next rank and grade, if applicable;

b. Appoint and promote the Petitioner from the rank and grade of Rear Admiral (lower half)(O-7), to the rank and grade of Rear Admiral (upper half)(O-8);

c. Adjust and establish the Petitioner's date of rank for his appointment and promotion to the rank and grade of Rear Admiral (upper half)(O-8) to be effective on 01 April 2013 ("Revised Date of Rank"), which was the Petitioner's original projected promotion date based upon the FY-12 promotion board results if no delay had intervened;

d. Correct the Petitioner's DD Form 214 to read in Block 4a, "RADM" in lieu of "RDML," and to read in Block 4b, "O-8" in lieu of "O-7"; and

e. Take any and all additional corrective administrative action consistent with effectuating Petitioner's appointment and promotion to the next higher rank and grade, including, but not limited to:

a. That Defense Finance & Accounting Service (DFAS) will complete an audit of Petitioner's records to determine if Petitioner is due any back pay and allowances following the Petitioner's new appointment and promotion with the Revised Date of Rank; and

b. A copy of this Report of Proceedings will be filed in Petitioner's naval record (OMPF).

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that 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.

[redacted]

Recorder

5. The foregoing action of the Board is submitted for your review and action.

ELIZABETH A. HILL
Executive Director

Subj: RECORD OF PROCEEDINGS ICO RDML BRIAN L. LOSEY, USN RET, [redacted]

SECNAV DECISION:

☒ Approve RDML Losey's petition to be promoted from the rank and grade of Rear Admiral (lower half)(O-7), to the rank and grade of Rear Admiral (upper half)(O-8), with a date of rank effective 1 April 2013. Take any and all additional corrective administrative action consistent with effectuating Petitioner's promotion.

OR

☐ Approve RDML Losey's petition to be promoted from the rank and grade of Rear Admiral (lower half)(O-7), to the rank and grade of Rear Admiral (upper half)(O-8), with a date of rank effective _____. Take any and all additional corrective administrative action consistent with effectuating Petitioner's promotion.

OR

☐ Disapprove RADM Losey's petition to be promoted to the next higher rank and grade.

Secretary of the Navy

THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

JAN 12 2017

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

Subj: BOARD FOR CORRECTIONS OF NAVAL RECORDS RECOMMENDATION ICO RDML BRIAN L. LOSEY, USN (RET)

Ref: (a) BCNR TDK Docket No. 10278-16 of 11 Jan 17

Pursuant to my authority under sections 624(d) and 1552 of title 10, U.S. Code, I approve the findings and recommendations of the Board for Correction of Naval Records as set forth in reference (a).

To effect my foregoing decision, I direct that Rear Admiral Losey's record be modified to reflect that I terminated the delay in his case prior to his effective date of retirement, that he receive his original projected effective date of rank of April 1, 2013, and that his retirement rank and grade of RDML/O-7 be revised to RADM/O-8.

By copy of this letter, I request the Defense Finance and Accounting Service complete an audit of Rear Admiral Losey's records to determine the appropriate amount of pay, to include back pay, allowances, and retirement pay, to which Rear Admiral Losey is authorized based on appointment and promotion to the rank and grade of RADM/O-8 on his effective date of rank, and to begin disbursing the appropriate amount of pay to Rear Admiral Losey.

Finally, I direct any and all additional corrective administrative actions consistent with effectuating Rear Admiral Losey's appointment and promotion to RADM/O-8, and subsequent retirement on 1 November 2016.

Ray Mabus

Copy to:
DFAS

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

[redacted]
Docket No. 10278-16
JAN 17 2017

RDML BRIAN L LOSEY USN RET
[redacted]

Dear Rear Admiral Losey:

The Board for Correction of Naval Records recently reviewed allegations of error and injustice in your naval record. The proceedings have been reviewed, and the recommendation of the Board has been approved on behalf of the Secretary of the Navy as set forth in the enclosure.

Navy Personnel Command (NPC), Records Analysis Branch (PERS-312), 901-874-4976, will make corrections to your record where appropriate. Please do not contact NPC until at least 30 days from the receipt of this letter.

After NPC makes these changes, the Defense Finance and Accounting Service (DFAS) will make payment of any money that you may be entitled to.

Questions concerning money paid and/or the manner of computation should be directed to DFAS, not the Board. Please do not contact DFAS until at least 90 days from the receipt of this letter. If you have not received payment after 90 days, you may contact DFAS via mail at DFAS-IN, 8899 East 56th Street, Department 3300 (Attn: COR/Claims), Indianapolis, IN 46249-3300 or call commercial (317) 212-6167 or DSN 699-6167 to inquire about the status of your pay. Also, you should immediately notify DFAS of any change in your mailing address.

[redacted]

By direction

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

[redacted]
Docket No. 10278-16
JAN 17 2017

From: Chairman, Board for Correction of Naval Records
To: Commander, Naval Personnel Command

Subj: REVIEW OF NAVAL RECORD ICO
RDML BRIAN L. LOSEY, USN, [redacted]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Approved findings, conclusions and recommendations of BCNR, less enclosures

1. In accordance with reference (a), the Board for Correction of Naval Records has reviewed allegations of error and injustice in the naval record of the subject.

2. The Regulations approved by the Secretary of the Navy require that the naval record of Subject to be corrected, where appropriate, in accordance with the approved recommendation of the Board as contained in enclosure (1).

3. By copy of this letter, the Defense Finance & Accounting Service, DFAS-IN/COR/Claims, is authorized to pay all monies lawfully found to be due as a result of the above correction to subject's naval record.

4. The Board has advised Petitioner of the approved recommendation.

5. It is requested that this letter and enclosures be placed in Petitioner's official record, and that this Board be furnished a copy of any correspondence relating to this approved recommendation.

[redacted]

By direction

Copy to:
BuPers (Pers 31C) or CMC
DFAS

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

[redacted]
5400
5 Jan 17

From: Chairman, Board for Correction of Naval Records
To: Chief of Naval Operations, Director, Flag Officer Management and Distribution (POOF)
ATTN: LCDR [redacted]

Subj: RDML BRIAN L. LOSEY USN RET

Ref: (a) 10 USC Section 1552
(b) SECNAVINST 5420.193

1. Pursuant to references (a) and (b), the applicant listed below has petitioned the Board for correction of his naval record. Under the authority of reference (b), the Board requests your written comments in order to assist it in its review of this matter. In preparing your comments, please focus on the issues, evidence and, where appropriate, cite the pertinent regulations and policies that you believe support your position.

2. Regulations approved by the Secretary of the Navy state that your comments should be submitted within 60 days after receiving this request. In the event of favorable comments, in addition to your response to the Board, it is requested that **all administrative corrective action be taken, where applicable**. Please forward unfavorable comments, together with any related material, to the Board as expeditiously as possible in order that the review of the Petitioner's requests may be completed. If the foregoing documentation is no longer maintained, a negative report to that effect is also required. Specifically, the Petitioner made the following request which we ask you to address in your response: "(1) revise my retirement grade from RDML/O-7 to RADM/O-8, and (2) authorize back pay for that grade from my RADM/O-8 statutory promotion date of 01 Apr, 2013 to my retirement date of 01 Nov 2016." On 30 November 2015, Chief of Naval Operations recommended that rear Admiral (lower half) Losey be promoted to Rear Admiral effective April 1, 2013. The case was forward to the Secretary of the Navy (SECNAV) for approval; do you have any information regarding SECNAV's response?

3. It is further requested that you address the Petitioner's contentions that there is adequate evidence to reflect an unjust outcome as well as errors in fact directly impacting the outcome, if those contentions are not addressed in the evidence of record.

Name	SSN	BCNR Docket No.	Supporting Document	Code
LOSEY	[redacted]	NR20160010278	DD-149	POOF

Subj: REQUEST FOR ADVISORY OPINION

4. Your information should be prepared in formal format and returned together with all supporting documents to the Executive Director, Board for Correction of Naval Records, 701 S. Courthouse Road, Suite 1001, Arlington, VA 22204-2490. Should you have any questions, please do not hesitate to call my office at [redacted]

By Direction

[redacted]CIV BCNR

From: [redacted]LCDR OPNAV, N00F
Sent: Friday, December 30, 2016 7:06
To: [redacted]CIV BCNR
Subject: RE: BCNR Docket #10278-16 ICO RDML Brian Losey USN Ret
Attachments: SKM_C454e16123006581.pdf; SKM_C454e16123006580.pdf
Signed By: [redacted]

[redacted]please see answers to your questions below.

(1-2). The FY-12 promotion board was approved by SECDEF, the President and confirmed by the Senate. We were apprised of the investigation after RDML Losey was confirmed, while he was awaiting his promotion date. Once the investigation was complete, it's SECNAV's policy that if an officer was selected for promotion and confirmed and then subsequently has any adverse findings by an investigation, that member must have a promotion review board (you should see the board's recommendation and CNP and CNO's concurrence with the board's recommendation in that in the package - we never received a final decision back from SECNAV).

3. Attached is his promotion hold letter with his acknowledgement. I was also able to find the congressional letter regarding his promotion that was sent to SECNAV (also attached).

4. The promotion doesn't become null and void after 18 months if the officer has been confirmed (which was the case with RDML Losey) - the 18 month rule only applies to members selected by a board that aren't confirmed within 18 months of SECDEF's approval of the board.

Please let me know if you have further questions. Thanks, Vr/[redacted]

Vr/
LCDR[redacted]
Flag Officer Management
and Distribution (P00F)
Ph: [redacted]

"For Official Use Only - Privacy Sensitive: Any misuse or unauthorized access may result in civil and criminal penalties."

-----Original Message-----
From:[redacted]CIV BCNR
Sent: Friday, December 30, 2016 6:47 AM
To:[redacted]LCDR OPNAV, N00F
Subject: BCNR Docket #10278-16 ICO RDML Brian Losey USN Ret

LCDR,

Good morning. I have a couple of questions pertaining to the promotion selection for RDML Losey I was hoping you could point me in the right direction for answers on Flag officer promotions.

[redacted] CIV BCNR

From: Brian Losey [redacted]
Sent: Friday, December 30, 2016 9:29
To: [redacted] CIV BCNR
Subject: [Non-DoD Source] Re: BCNR Docket #10278-16 ICO RDML Brian Losey USN Ret

Thank you [redacted] This came as a winmail.dat file. Will open it on home computer, hopefully. IRT another question you asked, my SOCAFRICA dates were June 2011 to June 2013. Commanded CJTF HOA from March 2010 to May 2011 (before SOCAFRICA), and NAVSPECWARCOM from June 2013 to August 2016 (after SOCAFRICA. VR Brian

Brian L. Losey
[redacted]

On Dec 30, 2016, at 8:26 AM, [redacted] CIV BCNR [redacted] wrote:

Sir,

I just received these this morning. Forwarding to you for your records.

[redacted]
<winmail.dat>

1. For the FY12 promotion board, what is the process for approval of the results of the board. Who is the final authority, Congress or President? (In the Action Memo from the Chief of Naval Personnel is says "The Secretary of Defense approved the promotion list on April 20, 2011 and the U.S. Senate confirmed the list on December 14, 2011.")

2. Was this list approved by the final authority?

3. Due to the investigations his promotion was put on hold. Is there some paperwork notifying him of his promotion being delayed?

4. Is there somewhere that specifies that if after 18 months of no action being taken on the promotion (not being promoted within 18 months of the effective date of the promotion date), that the promotion becomes null and void?

Thank you.

[redacted]

[redacted]
Board for Correction of Naval Records
701 South Courthouse Road Suite 1001
Arlington VA 22204
[redacted]
Fax: 703-604-3437

[redacted]

From: [redacted]CIV BCNR
Sent: Thursday, December 29, 2016 9:25
To: CAPT Schram WARCOM IG; [redacted]CIV NAVINSGEN, N62; Flatt, Dom CA OPNAV, N09D; [redacted]CIV NAVINSGEN, N625
Subject: FOUO: BCNR Docket #10278 ICO RDML Brian L. Losey USN Ret
Signed By: [redacted]

Gentlemen and Ma'am,

Good morning. I am in need of assistance on a BCNR case submitted by RDML Brian Losey (Ret). I am looking for the following:

DOD IG Complaints against RDML Losey. Specifically looking for dates of when complaint was submitted and when investigation was completed as well as if the complaint was either substantiated or unsubstantiated.

DOD IG Report No. 12-122712-017 dtd 15 Jul 2013
DOD IG Report No. 20121205-003439 dtd 04 Nov 2014
DOD IG Report No. 20121205-002863 dtd 04 Nov 2014

If I am not contacting the correct office, please let me know and if possible, point me in the right direction. Thank you for your timely assistance with this request. Have a great day.

[redacted]

[redacted]
Board for Correction of Naval Records
701 South Courthouse Road Suite 1001
Arlington VA 22204
[redacted]
Fax: 703-604-3437
"FOR OFFICIAL USE ONLY"

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

[redacted]
Docket No. 10278-16
JAN 18 2017

[redacted]

Dear [redacted]

This is in reference to your interest, as counsel, in the case of your client, RDML Brian L. Losey, United States Navy, Retired. In this regard, enclosed is a letter addressed to your client informing him of the results of his application for correction of his naval record. A copy of this letter was also sent to him at the address provided on his application.

Thank you for your interest in the Board for Correction of Naval Records. Please do not hesitate to contact me if you need further assistance.

Sincerely,

Elizabeth A. Hill
ELIZABETH A. HILL
Executive Director

Enclosure: BCNR ltr [redacted] Docket No. 10278-16 dtd 11 Jan 17

THIS DOCUMENT IS A ADMINISTRATIVE RECORD OF THE BOARD FOR CORRECTION OF NAVAL RECORDS AND MAY CONTAIN INFORMATION PROTECTED THE PRIVACY ACT. DO NOT RELEASE WITHOUT APPROPRIATE AUTHORIZATION.

Petitioner Name: RDML Brian L. Losey
Military Status: Retired
Docket No.: 10278-16
Issue Category: 310
Personal Appearance Requested: NO
Claims of Error/Injustice: Injustice

SPECIFIC ISSUES: Request revise retirement grade to O-8 and back pay from statutory promotion date of 1 Apr 2013 to retirement date of 1 Nov 2016

RECORD CHANGE REQUESTED: Request revise retirement grade to O-8 and back pay from statutory promotion date of 1 Apr 2013 to retirement date of 1 Nov 2016

PETITIONER CONTENTION(S): SEE PETITIONER'S STATEMENT

Complete Information as needed:

Service Branch	Rate/Rank	Dates of Service	Characterization of Service	Separation Reason(s)	Reentry Code
USN	RDML	09 Jul 1983 – 31 Oct 2016	HONORABLE	SUFFICIENT SERVICE FOR RETIREMENT	NA

Date	CHRONOLOGY OF RELEVANT EVENTS
	SEE TIMELINE

SUMMARY OF CASE / AUTHORITIES: SEE TIMELINE

(I.e. Disciplinary History (w/total days of Unauthorized Absence (if applicable), Prior/Post Military Service, Age, Education Completed, Scores, Combat History, Applicable Regulations/Statutes, NDRB review and determination)

Request for Information: CNO (POOF) – "On 30 November 2015, the CNO signed and forwarded a recommendation to the SECNAV supporting the promotion of RDML Losey to the rank of rear admiral. To date, this office has not received a final determination from the SECNAV on this action."

AO PROVIDED TO MBR: N/A **REBUTTAL RECD:** **CONGRESSIONAL INTEREST: YES**

Board Members:	Mr./Ms.	Mr./Ms.	Mr./Ms.
	[redacted]		
Board Vote	Initials	Initials	Initials
Grant Full	[redacted] 11 JAN 2017	[redacted] 10 JAN 17	[redacted] 10 JAN 2017
Grant Partial			
Deny			
Comments			

Examiner Initials (Case Prep/Board): [redacted]

10 UNDER THE PROVI NS OF TITLE 10, U.S. CODE, SECTION 2

ease read Privacy Act Statement and instructions on back BEFORE completing this

OMB approval

NR2016001027

LOSEY, BRIAN L

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the tim and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this b including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive S Alexandria, VA 22350-3100 (0704-0003). Respondents should be aware that notwithstanding any other provision of law, no pe of information if it does not display a currently valid OMB control number.

RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS

1. APPLICANT DATA *(The person whose record you are requesting to be corrected.)*

a. BRANCH OF SERVICE (X one)	b. NAME (Print - Last, First, Middle Initial)	c. PRESENT OR LAST PAY GRADE	d. SERVICE NUMBER (If applicable)	e. SSN
☐ ARMY ☒ NAVY ☐ AIR FORCE ☐ MARINE CORPS ☐ COAST GUAR	Losey, Brian L.	RDML/O-7 (ret)	[redacted]	[redacted]

2. PRESENT STATUS WITH RESPECT TO THE ARMED SERVICES (Active Duty, Reserve, National Guard, Retired, Discharged, Deceased)	3. TYPE OF DISCHARGE (If by court-martial, state the type of court.)	4. DATE OF DISCHARGE OR RELEA FROM ACTIVE DUTY (YYYYMMDD)
USN Retired	Honorable	20161101

5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED AS FOLLOWS: *(Entry required)*

I humbly and respectfully request the consideration of the Board to (1) revise my retirement grade from RDML/O-7 to RADM/O-8, and (2) authorize backpay for that grade from my RADM/O-8 statutory promotion date of 01 Apr, 2013 to my retirement date of 01 Nov 2016. I submit there is adequate evidence to reflect an unjust outcome as well as errors in fact directly impacting the outcome.

6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS: *(Entry required)*

(1) the Navy, as the adjudicating authority found that I did not respire in the execution of my duties as Commander, Special Operations Comman Africa, 2) the Promotion Review Board recommended that I be promoted subsequent to the Navy's adjudication, (3) that in 74 months of service a Flag Officer, I served honorable and effectively in command all 74 months, and in O-8 designated command billets for 57 months (CJTF-HOA and COMNAVSPECWARCOM), (4) that 10 USC 624 which prohibits withholding a statutory promotion for more than 18 months on account o an investigation was discarded (I was under investigation by DODIG from Dec 2011 to May 2015 - 42 months, and 25 months beyond my statut promotion date of 01Apr 2013 before notification) as a matter of due process. Please see attached documents for additional depth.

a. IS THIS A REQUEST FOR RECONSIDERATION OF A PRIOR APPEAL?	b. IF YES, WHAT WAS THE DOCKET NUMBER?	c. DATE OF THE DECISION
☐ YES ☒ NO	N/A	N/A

7. ORGANIZATION AND APPROXIMATE DATE *(YYYYMMDD)* **AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED** *(Entry required)* Naval Special Warfare Command 20160315

8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE

a. DATE OF DISCOVERY (YYYYMMDD)	b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THE APPLICATION.
20160315	N/A

9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS: *(If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)*

(1) RDML (ret) Losey Cover Letter of 22 Nov 16, (2) Congressional Inquiry/Congressional Record Entry into DODIG Investigations, (3) CNP Action Memo to SECNAV Support for Officer Promotion (3) PRB Notification, Proceedings, and Recommendation (4) PRB submitted materials.

10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. *(At no expense to the Government) (X one)* ☐ YES. THE BOARD WILL DETERMINE IF WARRANTED. ☒ NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENC

11.a. COUNSEL *(If any)* **NAME** *(Last, First, Middle Initial)* **and ADDRESS** *(Include ZIP Code)*

[redacted]

b. TELEPHONE *(Include Area Code)* [redacted]

c. E-MAIL ADDRESS [redacted]

d. FAX NUMBER *(Include Area Code)*

e. I WOULD LIKE ALL CORRESPONDENCE/DOCUMENTS SENT TO ME ELECTRONICALLY. ☒ YES ☐ NO

12. APPLICANT MUST SIGN IN ITEM 15 BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* **and relationship by marking one box below.**

☐ SPOUSE ☐ WIDOW ☐ WIDOWER ☐ NEXT OF KIN ☐ LEGAL REPRESENTATIVE ☐ OTHER *(Specify)*

13.a. COMPLETE CURRENT ADDRESS *(Include ZIP Code)* **OF APPLICANT OR PERSON IN ITEM 12 ABOVE** *(Forward notification of all changes of address.)*

Brian L. Losey

[redacted]

b. TELEPHONE *(Include Area Code)* [redacted]

c. E-MAIL ADDRESS [redacted]

d. FAX NUMBER *(Include Area Code)* N/A

14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

15. SIGNATURE *(Applicant must sign here.)*

16. DATE SIGNED *(YYYYMMDD)* 20161122

CASE NUMBER *(Do not write in this space.)*

NOV 2 3 2016

BY:

DD FORM 149, DEC 2011 PREVIOUS EDITION IS OBSOLETE Adm

22 Nov 16

From: RDML (Ret) Brian L. Losey, USN

To: Board for Corrections of Naval Records (BCNR)

Subject: Request for BCNR Action ICO RDML (Ret) Brian L. Losey, USN

Enclosures:

(1) Congressional Record of 13 May 2016, Extraction of Pages 33-36
(2) CNP Action Memo to SECNAV of 19 Nov 15, Support to Officer Selected by FY-12 Navy Rear Admiral Selection Board
(3) Promotion Review Board Notification, Proceedings and Recommendations
(4) RDML Losey Materials Submitted for Consideration of the Promotion Review Board.

1. I humbly and respectfully request the consideration of the Board to take the following actions:

(a) Revise my retirement grade from RDML/O-7 to RADM/O-8

(b) Authorize RADM/O-8 backpay from my statutory promotion date of 01 Apr 2013 to my retirement date 01 Nov 2016

2. I believe the record to be unjust for the following reasons:

(a) The Navy, as the adjudicating authority, conducted a careful review of the DODIG substantiation of reprisal allegations against me. The Navy determined that I did not reprise and the actions taken by me were consonant with my duties and responsibilities as a commander.

(b) The Promotion Review Board recommended that I be promoted subsequent to the Navy's adjudication.

(c) In 74 months as a Navy Flag Officer, I served honorably and effectively in command for 74 months, and in O-8 designated command billets for 57 months (CJTF-HOA, COMNAVSPECWARCOM). I was extended in command at Naval Special Warfare Command after DODIG substantiations, and Navy adjudication.

(d) 10USC624 prohibits the withholding of a statutory promotion for more than 18 months due to an investigation. This matter of due process was discarded in my case. DODIG kept me under investigation continuously from Dec 2011 to May 2015 – a total of 42 months, and 25 months beyond my statutory promotion date.

3. I believe the following errors in fact contributed directly to the unjust outcome:

(a) DODIG investigations against me were not fair and impartial as required by their investigative guidelines and instructions. Enclosure (1) reflects the results of a Congressional Inquiry into the matter after my promotion was denied and reveals significant information that was suppressed in DODIG's investigations, and supports the Navy's adjudication and my actions. I understand why DODIG will not shine any negative light on persons alleging reprisal. However, the biased presentation of facts and omission of relevant facts, in themselves create errors in fact. As a result of this

Congressional Inquiry, a Congressional Hearing was conducted on 9 September, 2016 on the ability of DODIG to conduct fair, impartial and timely investigations.

(b) SEN Grassley, a key member of the Whistleblower Caucus in a 6 April, 2016 Senate floor speech stated, "He allegedly broke the law and must now pay the price." The Navy conducted a thorough review of the case and determined that I did not reprise and by extension, did not break the law. I have indeed been held to account for what I allegedly did, not what the facts reflect that I actually did.

(c) In a joint letter, Senators McCain and Reid stated, "We are especially troubled that during a time when the Navy is reportedly working to create a service culture and promote command climates that are free of threats of unlawful reprisals, that you would consider promoting RDML Losey when you specifically found that he created exactly the type of negative command climate that is so harmful to our military," I served in command every day since 9/11 except for 1 year at National War College, and a little over 2 years at the National Security Council staff in the Office of Combating Terrorism. I have had numerous DEOMI Command Climate Surveys, and have never been below a DoD or Navy average in any assessed area. In my final 3 years in command, Naval Special Warfare Command came out at the #1 place to work in the Navy all three years based on civilian employee surveys conducted by the Partnership for Public Service. In my final year, Naval Special Warfare Command broke into the top 10 places to work in U.S. Government out of 323 elements of USG departments and agencies. The damning assertions against my leadership are not supported by the facts, and these errors in fact contributed to an unjust outcome.

4. I remain grateful for the opportunity to serve our Nation and our Navy – getting the most out of an organization when people are in harms way is demanding work. I did my best, but was not perfect. My conscious is clear. I remain grateful for the careful and diligent review of this matter by Navy leadership, and their efforts to back their findings. I thank you for your careful review and hope that my record can be righted, and a just outcome gained.

Very Respectfully,

Brian L. Losey
RDML (Ret) USN

Cases > Case: NR20160010278 Party: LOSEY, BRIAN L

Information Saved.

R Application Date	2016/11/22 (YYYY/MM/DD)
R Application Receipt Date	2016/11/23 (YYYY/MM/DD)
Number of Days In-process	48 Days
R Special Project	Not Applicable
Priority	3
R Case Status	BCNR Closed (Grants)
R Board Type	BCNR
R Case Category	Will Be Considered By A Board
R Reconsideration	No
R Congressional Interest	No
Responsible User	[redacted]
Location	Pay
R Analyst of Record	[redacted]
R Analyst Acceptance Date	2017/01/10 (YYYY/MM/DD)
Keyword	

Case Issues

Add Issues

Primary Issue	Applicant Issue	
Promotion		Remove

Additional Information

R MPC: US Navy

Authority For Separation Reason

Final Decision

R Draft Decision Document Attached	No
Verify Case General Data	Verified
R Board Date	2017/01/10
	Select Board
Final Decision	SECNAV Decision
R Final Decision Authority	Hill, Elizabeth
R Role	Director
R Final Decision (Signature) Date	2017/01/10 (YYYY/MM/DD)
Decision Letter Mailed Date	(YYYY/MM/DD)

Related Party Information

Applicant's Name	LOSEY, BRIAN L
Applicant's Address	[redacted]
Submitter's Name	
Submitter's Relationship to Applicant	

Created By	[redacted]
Created On	2016/12/05
Edited By	[redacted]
Edited Date	2017/01/10

Save Reset Unverify Delete

Back To Search Results

Back To Case Responsibility Search Results

For Official Use Only
My BCNR Today | Help | About | Change Password

Grassley on a Case of Whistleblower Retaliation at the Pentagon

Apr 06, 2016

Video of the speech is available here.

Floor Speech of Senator Chuck Grassley
on Admiral Losey Whistleblower Investigation
Delivered April 6, 2016

Mr. President, I come to the floor today to tell a story about how a distinguished naval career was ruined by abuse of suspected whistleblowers.

The end-result is a mixed bag of good and bad.

In doing oversight of Defense Department whistleblower cases, I have learned a difficult lesson. As hard as we may try, whistleblower cases rarely have good outcomes. True, a wrong may have been made right. A measure of justice may have been meted out. But the victims – the whistleblowers – have been left out in the cold. They may never get the remedies they seek and deserve.

At the center of this case is an honored naval officer, Rear Admiral Brian L. Losey. He can only blame himself for what happened. No matter how you cut it, though, the destruction of a distinguished military career – especially one devoted to hazardous duty in special operations – is unfortunate and sad. Yet that's accountability's harsh reality. He allegedly broke the law and must now pay the price.

In the end, under pressure from several quarters, Secretary of the Navy Ray Mabus was forced to deny Admiral Losey his second star. This promotion was hanging fire for five years mostly because of ongoing investigations. Admiral Losey had allegedly retaliated against several whistleblowers.

If Secretary of the Navy Mabus and the Navy's top brass had their way, Admiral Losey would be wearing that second star today. But late last year, it got tossed into a boiling cauldron.

Mounting opposition was coming from four different directions:

First, on November 13, 2015, after learning about the controversy, a bipartisan group of senators weighed in with a request for all reports on the Losey matter. The request came from Senators Wyden, Kirk, Boxer, Johnson, Markey, McCaskill, and Baldwin along with this Senator from Iowa. We are members of the Whistleblowers Protection Caucus. Others also requested these reports.

Second, on December 2, 2015, we received 4 of the 5 Department of Defense Office of the Inspector General reports of investigation. One is still being reviewed, and I will have more to say about that in a minute.

In reviewing these documents, we quickly realized that Admiral Losey appeared to be a serial "retaliator." The evidence was overwhelming. He allegedly broke the law.

It all began in July 2011 at the Norfolk Navy base travel office. There was a minor dispute over who should pay for his daughter's airline ticket to Germany. As a Coast Guard Academy cadet, she was not entitled to travel as a dependent at taxpayers' expense.

Although Admiral Losey, his wife, and staff allegedly "pestered" the travel office to pay for the ticket, Admiral

Losey eventually purchased it with his own money. Nonetheless, the incident triggered a Hotline complaint on July 13, 2011. Admiral Losey was informed of the complaint two months later.

It was all down-hill from there.

After learning of the anonymous Hotline tip, Admiral Losey was reportedly "livid." He saw it as an act of disloyalty and "a conspiracy to undermine his command." He reportedly developed a list of suspects and began a punitive hunt for moles. Reports indicate he was determined to find out who blew the whistle, and when he did, he allegedly said he "would cut the head off this snake and end this."

In his drive to root out the moles, he created a "toxic" environment in his command. His seemingly reckless behavior and blatant disregard for the law and well-being of his subordinates led to his downfall.

The end-result of the admiral's misguided search for moles were a series of reprisals against suspected whistleblowers. His choice of suspects was gravely mistaken.

Not one, in fact, had blown the whistle. Yet, each was allegedly subjected to adverse personnel action at his direction or with his concurrence. His targets were mostly senior members of his command staff in Stuttgart, Germany.

The person who actually blew the whistle worked in the travel office in Norfolk, Virginia. Clearly, this was a case of misdirected retaliation, which makes his alleged abuses even more egregious.

As soon as Senators finished reviewing these reports and started asking pointed questions, the Navy knew the watch-dogs were on the case. The Navy brass went to general quarters.

According to reports in the Washington Post, the top brass turned up the pressure. They arbitrarily dismissed the Inspector General's findings and put the promotion on the fast track.

Third, my good friend from Oregon, Senator Ron Wyden, on December 18, 2015, upset that apple cart.

He placed a hold on the pending nomination for a new Under Secretary of the Navy, Dr. Janine Ann Davidson.

His hold was not directed at her. Instead, it was directed at Admiral Losey's pending promotion. He had grave concerns about the revelations in the Inspector General's reports.

His hold restored much-needed leverage lost when the Senate confirmed the admiral's promotion in December 2011. He wanted Secretary Mabus to reconsider the promotion. I commend my friend from Oregon for taking this action. It was a game-changer.

Fourth, on January 14, 2016, there came a bolt out of the blue.

The Senate Armed Services Committee fired a shot across the bow that stopped the Navy dead in the water.

The Committee's letter to Secretary Mabus began with this damaging assessment: After reviewing the investigative reports, we "maintain deep reservations" about Admiral Losey's ability to successfully perform at the two-star level.

This was the death knell, but the Committee's condemnation did not end there.

If it had known in 2011 what it knows today, the Committee said, it would never have confirmed Admiral Losey's nomination.

The Inspector General's damaging investigative reports had turned its earlier assessment upside down.

The Committee then slammed the door shut.

The Committee urged Secretary Mabus to use his authority to deny the promotion. That was no gentle nudge.

This letter effectively ended Admiral Losey's career.

Secretary Mabus had run out of options. He had to do what he had to do. The Committee of jurisdiction had laid down the law. The admiral should not be promoted. End of story.

Admiral Losey will now step down as leader of the Naval Special Warfare Command and retire.

The Committee's ground-breaking letter was signed by the Chairman, Senator McCain, and Ranking Member, Senator Reed.

This letter constitutes a sharp departure from the past.

During the course of my oversight work, I have had several beefs with the Committee over issues exactly like this one. All were about the need to hold senior officers accountable for alleged misconduct based on evidence in IG reports. The response back then was very different from what I see here today.

I see this letter as a breakthrough. It's a masterpiece.

I am proud of the Committee. This about-face came under new leadership. I hope it signals the dawning of a

bright, new day.

I thank Chairman McCain and Ranking Member Reed from the bottom of my heart for outstanding leadership. Their action sends a message to whistleblowers: reprisal will not be tolerated. That's a real morale booster for all whistleblowers suffering under the weight of reprisal.

I thank them for having the courage to do the right thing. Holding such a distinguished naval officer accountable was no easy task. To the contrary, it was as difficult as they get.

Mr. President, now that the question of the admiral's promotion has been laid to rest, I would like to turn to some unfinished business that I alluded to earlier. The true scope of the admiral's retaliatory actions is still being examined.

The focus is on the 5th and final report of the Losey investigation.

It's more like a phantom than a real report.

Over one thousand one hundred and fifty days have passed since this investigation began, and it's still not finished. It should be a piece of cake. The cast of characters, facts, evidence, and findings should be essentially the same as in the other Losey reports published long ago.

So what is really going on here?

I have received several anonymous tips. What I hear is disturbing. This report is allegedly being doctored, causing a bitter internal dispute.

On one side are the investigators. They appear to be guided by the evidence. On the other side is top management. They appear eager to line up with the Navy's decision to arbitrarily dismiss the evidence.

From the get-go, the findings in the draft report substantiated reprisal allegations against Admiral Losey -- consistent with the other reports. Top management initially concurred with those findings. However, in response to alleged pressure from Secretary Mabus' office, they caved and agreed to take Losey out of the report.

How could they get such a bad case of weak knees? The evidence starring them in the face seems irrefutable -- rock-solid. Plus, it was just re-affirmed by an unlikely source – the U.S. Air Force.

Because two Air Force officers were allegedly involved, the Air Force had to conduct its own review. The Air Force also found the evidence compelling. As a result, the Air Force officer, who was Admiral Losey's command attorney, reportedly faces potential legal trouble. He allegedly facilitated the Admiral's retaliatory actions. The other will retire.

Despite the red flags and need for caution, caution was tossed to the wind.

On March 31, 2015, Deputy Inspector General Marguerite Garrison gave the Navy a green light to proceed She notified Admiral Losey by letter that "he was no longer a subject of the investigation."

How could she do such a thing?

At that point in time, Admiral Losey's alleged retaliation was the centerpiece of the report. True, it was a draft report in the midst of review. True, there were questions about Admiral Losey's role. Yet, after the passage of one year, the dispute remains unresolved. The report is still in draft – mired in controversy.

Mr. President, something is rotten in the Pentagon.

To send such a letter, which was inconsistent with the evidence in an unfinished report, seems inappropriate. The Garrison letter set the stage for what followed.

To conform with the Garrison letter, the findings in the draft report had to be allegedly changed from substantiated to not substantiated.

The investigators dug in their heels and stood their ground. The evidence was apparently on their side.

In early December 2015, as the Losey promotion issue reached a critical juncture, top management allegedly "directed" the investigators to change the report's finding from substantiated to not-substantiated. The investigators were also allegedly directed to change facts and evidence to fit the desired finding. In other words, key pieces of evidence had to be allegedly "removed" to ensure that the evidence presented in the report was aligned with the specified conclusions.

These are very serious allegations.

Deliberately falsifying information in an official report constitutes a potential violation of law.

If the directed re-write of this report really happened and if it is allowed to stand, it could undermine the integrity of the investigative process.

The new acting Defense Department IG, Mr. Glenn Fine, needs to grab the bull by the horns.
He needs to call the top officials involved on the carpet. This would include Mrs. Garrison and her deputies, Director Nilgun Tolek and Deputy Director Michael Shanker. He needs to ask them to explain and justify their actions.
Next, he needs to ask the investigators to present their side of the story.
Then he needs to independently and objectively weigh the evidence and figure out what needs to be done.

-30-

8

two officers served many years in their role for the people of Placer County and northern California.

Like them, many others around the country have lost their lives in the line of duty to protect us. We need to honor them. We need to be behind them at all times. The thin blue line is between us and a lot of really bad things in this Nation. They go to work each day willing to pay the price, if it is necessary. We honor them.

In the midst of everything going on these days in the news and the media, it is important that we always remember their sacrifice, and stop and thank them, and get to know them as they are trying to get to know the people in the community. We find out they are just human like us and are after the same things, as Americans.

MOMENT OF SILENCE FOR CARL WHITMARSH

(Mr. AL GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. AL GREEN of Texas. Madam Speaker, I stand today in the well of the House to pay tribute to a great and noble American, a person who gave a lot to his country.

He was a loyal Democrat. He was a Democrat's Democrat, but he was more than that. He was a person who was a voice for the voiceless.

He was one of those persons who had a publication that was widely circulated in Houston, Texas, and this publication was the means by which those of us who could read the front page, but not understand the rest of the story, we could acquire that intelligence by simply reading his words.

He made things not only clear, but perspicuously clear. He was a person that went out of his way to get truth to those who would be confused, if not but for what he would do.

So I am honored to say that Carl Whitmarsh was a great and noble American. But I am also honored to say that he was a person who made it very much possible for the Democratic Party to thrive in Houston, Texas.

Lane Lewis, who is the current chair, benefited from his presence. He and Lane worked closely together. In fact, it is very difficult to think of him and not think of Lane Lewis. Carl Whitmarsh, Lane Lewis.

Carl, may you rest in peace.

I will now ask for a moment of silence in his honor.

UNLEASHING AMERICA'S ECONOMIC POTENTIAL

The SPEAKER pro tempore (Mrs. MIMI WALTERS of California). Under the Speaker's announced policy of January 6, 2015, the gentleman from Georgia (Mr. WOODALL) is recognized for 60 minutes as the designee of the majority leader.

Mr. WOODALL. Madam Speaker, I want to begin by yielding to the gentleman from Montana (Mr. ZINKE), one of the great freshmen here leading our institution.

HONORING THE SERVICE OF REAR ADMIRAL BRIAN LOSEY

Mr. ZINKE. Madam Speaker, I rise today in support of Rear Admiral Brian Losey, the current commander of Naval Special Warfare Command, our Nation's top U.S. SEAL. He is entrusted with the honor of commanding all SEALs, all special boat units, and all support staff across this great country and across many theatres.

I have had the privilege of serving with Brian Losey, SEAL Team 6, Red Team, and I can tell you that Brian is an outstanding officer.

It is an obligation of every officer to take action when he sees wrong, and Brian Losey did just that. He saw a problem and took action. He took decisive action because he knew the actions of others around him were wrong.

Yet, once again, an entrusted, entrenched bureaucracy was allowed to hide behind threats, hide behind whistleblowers, hide behind rules that were intended to protect command and not to erode it. And yet, those accusations discredited a great officer and the head of the United States Navy SEALs.

I understand these protections are important, and they are necessary, but we cannot allow such protections to go against accountability and against the sanctity of command.

In this case, the Navy reviewed the investigation on Admiral Brian Losey. They found him to be innocent and wrongfully accused. I have seen the evidence and went through it line by line. I fully support the Navy's conclusion and believe that they properly reviewed this case.

The DOD had different conclusions, and I believe those DOD conclusions from the IG are flawed and are cherry-picked.

Admiral Losey is highly regarded by his subordinates, all of the Naval Special Warfare community, and all SEALs who have served with him and under his command. This includes the Navy SEAL standing before you. I have known this man and his family for 30 years.

Let me just give you a snapshot of Admiral Losey's leadership under his command of Naval Special Warfare. The SEALs, and those under his command, have executed 654 total missions, have killed 461 high-value targets—every one of those targets, if given a chance, would do grievous harm to our Nation—have captured 60, wounded 32, rescued an American hostage, deployed an average of 250 days of the year.

In 2015 alone, in Iraq, Naval Special Warfare Command and its components were responsible for the killing or capture of over 3,000 enemy combatants.

Admiral Losey personally deployed to Operation Inherent Resolve, Operation Enduring Freedom in the Trans-Sahara. He has deployed to 30 countries. Naval Special Warfare forces under his command are deployed to countries across this great globe. Th advanced partner forces' security cap bilities, training over 6,000 of our a lies.

Madam Speaker, America, our me women, and children, both at home a abroad, are able to sleep at night d to the leadership of Admiral Losey a those forces that he commands.

Admiral Brian Losey, I thank you f your dedicated service to this countr As a former teammate and Unit States Navy SEAL, I am proud of a that you have done for our communit for the United States Navy, and o grateful Nation.

Mr. Speaker, I rise today in support of Re Admiral Brian Losey, the current Command of Naval Special Warfare Command, our N tion's top U.S. Navy SEAL, entrusted with t honor of Commanding all Navy SEALs. I h the privilege of serving with Brian in t SEALs and am proud to call him a team mat

It is the obligation of every officer to ta action when they see wrong, Admiral Los did just that. He saw a problem and took a tion. Yet once again, our entrenched bureau racy has allowed senior civilian individuals hide behind anonymous accusations and whi tle blower protections, in an attempt to di credit a great man and cover-up their tran gressions.

While these protections are important ar necessary, they cannot be allowed to b abused or shield them from being held a countable.

In this case, after the Navy reviewed the i vestigation of Admiral Losey, they found hi to be innocent and wrongfully accused. I hav seen the evidence. I fully support the U.S Navy's conclusion and believe they proper reviewed the case and fairly adjudicated th matter.

Admiral Losey is highly regarded by his sub ordinates and all of the special warfare com munity as a true selfless and humble leade This includes the Navy SEAL standing befo you that has had the honor to serve with hi and know him for the last 30 years. He h sacrificially served our nation with distinctio and honor.

Let me just give you a snap shot of Admir Losey's leadership under his command Nav Special Warfare Forces have:

Executed 654 total missions.

Killed 461 High Value Individuals.

Captured 60, Wounded 32.

Rescued an American Hostage.

Deployed an average number of 250 day

NSW strives to maintain a 1:3 deploy-t dwell ratio.

In 2015 Iraq alone, NSW was responsib for the coordinated capture/kill of over 3,0 enemy combatants.

Participated in Operation Inherent Resolv Operation Enduring Freedom (AFG/PI/HO/ TransSahara).

Deployed to 30 countries as Crisis R sponse Forces.

Deployed to 70 countries to support 55 training events for allied and partner nation advancing partner forces' security capabilitie ultimately training approximately 6,000 foreig partner and allied military personnel per yea

American men, women, and children, bo at home and abroad, are able to sleep soun ly in their beds due to the leadership ral Losey and the actions of the women he leads.

Admiral Brian Losey thank you for your dedicated and faithful service to the United States of America. As a former teammate and U.S. Navy SEAL, I am proud of all that you have done for the NSW community, the United States Navy, and our great nation.

The following in a more in depth background of the situation:

There has been significant public media interest in the Whistleblower Reprisal Investigations against Rear Admiral Brian Losey, currently serving as Commander, Naval Special Warfare Command while serving as Commander, Special Operations Command Africa. My professional interest in these issues as a member of House Armed Services Committee, and as a former member of the Naval Special Warfare Community, was drawn by the apparent divergence in reporting put forth by the DoD Inspector General, and the adjudication conclusions of the Navy—and further highlighted by a divergent Senate address by Senator CHUCK GRASSLEY and a pointed op-ed by the former Commander, U.S. Special Operations Command Admiral (ret) Bill McRaven, which raised concerns about the unjust and destructive politicization of the matter. I looked into these cases and identified the following significant, and not all-inclusive, items of concern from the evidence submitted to the DoD Inspector General:

Rear Admiral Losey relieved an Air Force Lieutenant Colonel of his duties as Director of Personnel and Administration (J1 Director). This officer was responsible for the processing of awards and evaluations for service members assigned or conducting duties in support of Special Operations Command Africa (SOCAFRICA), and was delinquent in the processing of over 300 awards and evaluations spanning a timeframe greater than two years.

Rear Admiral Losey and the Deputy Commander of SOCAFRICA counseled this officer well before any IG complaints were raised. By word and deed, this officer signaled that he was unwilling to step up his efforts to take care of service members, citing his family life as his primary concern, and arguing against establishing the normal administrative trackers for awards, evaluations, and pending transfers and gains in personnel as requested by Losey. After discovering that this officer allowed the use of Admiral Losey's legal signature via auto pen 36 times without the necessary authorization, and then not being truthful about it, Rear Admiral Losey relieved him and properly referred the placement of this officer to the Air Force chain of command.

In the same timeframe, an Army Captain assigned to the J1 filed an 8 page complaint against the J1 Director, citing a hostile work environment, lack of compliance with various administrative policies, and many of the same issues that SOCAFRICA leadership had already addressed in counseling with the J1 Director. An investigation was conducted by SOCAFRICA's higher headquarters, U.S. Africa Command, which determined that the J1 Director was culpably negligent and derelict in the execution of his duties on multiple counts. The investigation noted that the Senior NCO in the J1 among others, had reflected this officer "was seldom in the workplace for 40 hours a week." The AFRICOM Judge Advocate Office endorsed the investigation and an Air Force Major General at AFRICOM issued a Letter of Counseling to the SOCAFRICA J1 Director citing "a lack of; professionalism, selfless service, self-discipline and duty" and further recommending that this officer "approach future situations with the integrity and professionalism expected of an Air Force officer".

The AFRICOM investigation further recommended that this officer be issued an adverse fitness report. Admiral Losey did not issue an adverse fitness report and instead, recommended this officer for all for promotion requirements and promotion. It is apparent that Admiral Losey exercised considerable restraint and care in handling this officer.

The written and verbal testimony as well as the substantial supporting documentation submitted to DoD IG by Rear Admiral Losey, the Deputy Commander, and the Chief of Staff reflects good faith and effective efforts to resolve both performance and misconduct issues related to the former Chief of Staff and the most senior civilian assigned to SOCAFRICA—publicly identified as Mr. Fred Jones through multiple media statements he has made related to these cases.

Mr. Jones was provided a written counseling document for necessary performance improvement owing to a lack of staff processes, which he was responsible for developing and implementing over the four years he was the Chief of Staff, as well as deficiencies in staff organization and execution of his assigned duties. In addressing the increasing workload and levels of risk brought to SOCAFRICA service members deploying to Africa in the shadow of the Arab Spring and exacerbated by longer term and growing Al Qaeda, Al Shabaab, and Boko Haram terrorism concerns, Mr. Jones agreed amicably in writing to the creation of a Director of Staff position to help level the workload not being addressed in his role as Chief of Staff. This parallels the common Deputy Commanding General for Operations and Deputy Commanding General for Support structure in Army Divisions. Rear Admiral Losey, with the diligent work of the staff was able to create a GS–15 position for Mr. Jones with no decrement to pays, benefits or stature. The new Chief of Staff, an Army Colonel, offered Mr. Jones workspace in the Chief of Staff office. Mr. Jones had a couple of other choices and selected an office co-located with a longtime friend, remote from the command group.

Shortly after the new Chief of Staff assumed his duties, he gained access to the SOCAFRICA pay report. He noted and confirmed significant irregularities in pay benefits drawn by several SOCAFRICA civilian members with AFRICOM, who issued the report. A formal, command-wide, and broad scoped investigation was initiated and spanned a timeframe of one and a half years prior to Rear Admiral Losey's arrival to approximately one and a half years after his arrival. The investigation of over 1,000 pay record entries revealed that Mr. Jones, along with 3 other civilians identified in allegations against Losey, comprised 92% of the major pay violations in SOCAFRICA in that three year period. This was particularly egregious as Mr. Jones, a retired Army Reserve Special Forces Colonel, was accountable for maintaining the integrity and compliance of the pay system, and was the single largest violator of DoD Financial Management Regulations and policies in SOCAFRICA by routinely seeking pay and leave benefit approvals from his subordinates. This investigation and a subsequent AFRICOM IG inspection further revealed that several civilians in SOCAFRICA held una thorized super user/system administrator pri leges in the pay system and were circur venting the normal benefit approval ar verification processes. Rear Admiral Losey c rected Mr. Jones to personally comply wi proper procedures—but Mr. Jones disregarde this direction and continued to seek approva of pay benefits through his subordinates. Th whistleblower complaints against Rear Admir Losey were raised AFTER the pay investig tions were initiated and Mr. Jones implicate in misconduct. To not investigate this mi conduct given the data presented would hav been a dereliction of duty by Rear Admir Losey.

This misconduct was further amplified whe the new Chief of Staff went to work with sta experts to include Mr. Jones, in creating a apparently absent pay policy with SOCAFRICA. Weeks into this work, the ne Chief of Staff discovered that a policy had a ready been created years earlier under th hand of Mr. Jones. Mr. Jones did not disclos that there was already a policy in effect th was not being complied with.

After designation as Director of Staff, M Jones was properly detailed in accordanc with his job description and duties to complet the body of instructions and policies th should have been in place for a command th was 4 years old. With persistent managemer oversight, he satisfactorily completed his task months after the agreed to suspense dat and was rated as "successful" in his perform ance evaluation. This evaluation was fully sup ported by civilan personnel policy, was not "lowering" of his ratings, as this was Rear Ac miral Losey's first report on Mr. Jones. Thi rating did not require any Performance Im provement Plan as incorrectly asserted b DoD IG, and is required only for evaluation reflecting "failure". It appears that Losey di not reprise in addressing these issues. It ap pears that the responsible management off cials (RMOS) as a whole, took considerabl care in ensuring Mr. Jones' pay and stature i the creation of a GS–15 Director of Staff pos tion were not decremented or compromised.

In another disturbing demonstration of lack of process, internal management, an compliance, SOCAFRICA's executive over sight agency for communications securit (COMSEC) and specifically, the handling c sensitive cryptographic keying material note a pervasive lack of compliance i SOCAFRICA's COMSEC program during staff assist visit. Discrepancies in COMSEC are a national security concern, and reportabl at all times. Their discovery during the assis visit threatened to shut down SOCAFRICA' communications, and the numerous operation they supported. Rear Admiral Losey learne that his COMSEC vault and COMSEC man agers were not certified, and that there wer a significant number of cryptographic keys i Africa that had not been documented as prop erly destroyed. The was perplexing as Rea Admiral Losey recalled the receipt of com mendatory correspondence from USSOCOM for an excellent internal management contro program only a couple of months before hi arrival at SOCAFRICA. This program is de signed to apply additional oversight on sen sitive or high impact functions of a command to include COMSEC. Given that the program was commendable on one hand, and failing on another, an investigation was initiated. The

investigation revealed that the COMSEC oversight portion of the internal management program was falsified with backdated compliance checklists, and an unsupported statement of compliance. Staff processes, staff function and compliance, fell squarely in Mr. Jones job responsibilities. Again, Rear Admiral Losey handled the correction of this issue administratively at the lowest level possible. By all evidence reviewed, it appears that Rear Admiral Losey did his best to ensure that SOCAFRICA was able to provide critical support to service members deploying into complex security situations and at risk, while preserving Mr. Jones equities as a civil servant. These areas included Somalia and boundary states, South Sudan, Libya, Uganda and countries impacted by the Lord's Resistance Army (LRA) and Joseph Kony, as well as a dozen more countries in the Trans-Sahara and Islamic Maghreb regions—areas where Al Qaeda and Boko Haram were spreading.

Civilian A, a named party in the allegations against Rear Admiral Losey, served as the SOCAFRICA Executive Officer (XO), and was a retired Army Major. He was subordinate to and rated by, Mr. Jones. He was the primary unauthorized approval authority for Mr. Jones' pay benefits as revealed in the broadly scoped, command wide investigation into the matter.

As XO, Civilian A was properly detailed in accordance with his job description and duties to assist Mr. Jones in completing the body of instructions and policies necessary to define and formalize SOCAFRICA's staff processes and functions. Along with Mr. Jones, Civilian A satisfactorily completed this task with persistent management oversight months after the agreed suspense date. In accordance with personnel policy, he was given "successful" evaluation marks in a report rendered by Losey. This was Losey's first report on the member, and was not a "lowering". As with Mr. Jones, a performance improvement plan was not required, and is triggered when a member is assessed to be "failing". As reflected in evidence submitted to DoD IG by RMOS, Civilian A had repeated clashes with senior management officials, and was constant in his efforts to assert alternative realities of discussions and agreements. He was particularly resistant to direction to removing his liquor displays from the government workplace.

At the request of Civilian A, and as agreed to at the outset of the detail period, Civilian A was moved to the SOCAFRICA Directorate for Plans (J5) upon completion of his work detail with Mr. Jones. As there was no civil servant position available for him in the J5, Rear Admiral Losey and management officials ensured his placement by creating a GS–13 non-compete billet in the J5 to support and ensure Civilian A's professional placement and development desires. DoD IG instructions require that investigators assess the motives and character of witnesses. In the case of Civilian A and Mr. Jones, it is apparent that the whistleblower complaint against Rear Admiral Losey was likely not triggered by the distant allegation of a travel infraction, but more proximately triggered as a shield to the long standing misconduct associated with padding their compensatory time and overtime pay benefits, and circumventing the very processes they were accountable for instituting and enforcing in SOCAFRICA. DoD IG questioned Losey on a "locker room" discussion from which nearly every quote that is attributed to Losey and his alleged reprisal motives emanate. After misrepresenting Rear Admiral Losey's transcribed testimony in preliminary reports, and after separate questionings a year apart, DoD IG concluded that they could not substantiate that any "locker room" discussion occurred—this was revealed finally as an allegation made by Civilian A as a "one on one" conversation. It is a significant concern, but likely an simple administrative oversight to see the elements of a conversation that could not be substantiated cascaded through every DoD IG investigative report as though they actually occurred. It is equally concerning that DoD IG enables these complainants seeking the title of "whistleblower" to exercise a seemingly unlimited dominion over truth and forthright character. Civilian A, as an Army Officer and Battalion XO, ordered a cover up in advance of a CID investigation into a drowning death of an Iraqi citizen. He later testified on the matter in exchange for immunity from prosecution, while soldiers from the Battalion that followed his orders were tried in court. Civilian A's character is well chronicled in the book "Drowning in the Desert" by V.H. Gambera. He was ultimately censured by the Chief Staff of the Army for obstruction of justice. These motive and character assessments are clearly relevant.

I reviewed the separate investigation into Rear Admiral Losey's leadership, as referenced by Admiral (ret) McCraven. Rear Admiral Losey's effectiveness as well the respect he generates in mission execution is well documented. Additionally I note that he has exceeded DoD and Navy averages for every command climate assessment area based on DEOMI Survey records.

I commend the Navy for its careful and forthright review of relevant evidence in this matter. Mission execution and ensuring proper support of service members in harm's way while bringing SOCAFRICA's processes and compliance to acceptable levels were evident drivers in RMO and Rear Admiral Losey's actions, and clearly supports the Navy's adjudication conclusions.

I am deeply concerned that three and a half years of investigating, over 100 witness interviews, and 300,000 e-mails were digested to produce biased reports at the near complete exclusion or distortion of the testimony, evidence, and documentation that provided credible support and justification for the actions of RMO's and for a commander's duty obligations and responsibilities. I am equally concerned at the disregard for timeliness in the execution of these investigations, and note there is still a "phantom investigation" open for over a thousand days? There are also legitimate concerns with DoD IG's handling of sensitive case material and its' release to the media. There is something seriously amiss at DoD IG.

Finally, I wholeheartedly agree with my colleague Senator GRASSLEY—there needs to be an independent, in depth investigation into the Deputy IC for Administrative Investigations, Marguerite Garrison. I have substantial misgivings in the integrity, investigative practices, timeliness, and compliance under her leadership in this matter based on my review.

[From the Tampa Tribune, Apr. 24, 2016]

(By William H. McRaven)

When I was a young boy my father, a veteran of World War II and Korea, schooled me on the downfall of Gen. Douglas MacArthu MacArthur, he explained, had overstepp his authority and shown blatant disrespe for the civilian leadership of the countr President Harry Truman relieved him of h command, and MacArthur retired soo thereafter.

Civilian rule of the military was one of tl most fundamental principles of the arm forces. To believe differently was dangerou my father told me. Dad strongly support Truman's action, and he made me unde stand the value of the civil-military rel tionship—a lesson I never forgot.

But over the past decade I have seen a di turbing trend in how politicians abuse ar denigrate military leadership, particular the officer corps, to advance their politic agendas. Although this is certainly not new phenomenon, it seems to be growing i intensity. My concern is that if this trend disrespect to the military continues it wi undermine the strength of the officer cor to the point where good men and women wi forgo service—or worse the ones serving wi be reluctant to make hard decision for fe their actions, however justified, will be use against them in the political arena.

Take the recent case of Rear Adm. Bria Losey.

Adm. Losey is the commander of all Nav Special Warfare forces—the SEALs and Sp cial Boat sailors. I have known Losey fo more than 30 years. He is without a doul one of the finest officers with whom I hav ever served. Over the past 15 years no offic I know in the SEAL Teams has given mo to this country than Brian. None. As a youn officer he was constantly deployed awa from his family. After 9/11, he was sent to A ghanistan in the early days to help fight th Taliban. From there, Losey participated i the final march to Baghdad and then staye in country as a SEAL Task Unit Con mander. Afterward he served as the deput and then the commanding officer of SEA Team Six during more tough fighting in A ghanistan.

Later he was posted to the White House i the Office of Combating Terrorism. He mad rear admiral in 2009 while at the Whit House. He was subsequently sent back ove seas to Djibouti, Africa, to do a 15-mont isolated tour as the commander of all U.S forces in the Horn of Africa. As a result that successful tour, he was given comman of Special Operations Command, Afric (SOCAFRICA).

SOCAFRICA was a relatively new com mand, which had been established to addres the growing threat in North Africa. Locate in the beautiful Swabian city of Stuttgar Germany, it was initially staffed with mil tary and civilian personnel from anothe nearby special operations unit. Althoug most of the men and women were incredibl capable, hard-working staffers, there was small core who had been living in Europe fo years enjoying the comfortable lifestyle i Stuttgart.

Upon Losey's arrival in Germany, the situ ation in North Africa changed dramatically and the fledgling SOCAFRICA had to quickl get on wartime footing. Brian Losey did jus that.

Losey is a no-nonsense officer who know what it takes to get results. Combat is hard Lives are at stake. Being genteel and consid erate of everyone's feelings are not the quali ties that will engender success. But althoug Losey can be a tough taskmaster, he is "by-the-book" officer. Unfortunately fo Losey, along the way to strengthening th command there were those who fought th change and through a series of whistleblowe complaints sought to seek his removal.

At the time, I was the commander of th U.S. Special Operations Command in Tampa

I worked with Gen. Carter Ham, who commanded U.S. Africa Command and had operational control of Adm. Losey, to investigate the complaints.

The investigation we initiated determined that Losey's leadership style, while brusque and demanding, did not warrant his removal. The Navy subsequently recommended Losey for two stars, and he was confirmed by the Senate in December 2011.

Although the Navy inspector general absolved Losey of any wrongdoing, his promotion was put on hold pending DOD inspector general resolution of the complaints. Nevertheless, the secretary of the Navy agreed to reassign Adm. Losey to the premier job in Naval Special Warfare—command of all the SEALs.

During the past three years as commander of Naval Special Warfare Command (WARCOM), his staff has consistently ranked WARCOM to be one of the best places to work in the Navy. He has passed all Navy IG inspections with flying colors, and the retention statics for his young officers and enlisted is exceptional.

However, in the course of those three years, the whistleblowers from Stuttgart continued to pursue Losey's removal and resignation, routinely submitting new complaints to prolong the process and hold up his promotion.

A series of DOD inspector general investigations were reviewed by the Navy leadership and, once again, Adm. Losey was found not to have violated any law, rule or policy. In fact, it was clear to the Navy that the personnel action taken by Losey against the complainants was not reprisal. He was recommended again for promotion to two stars.

Despite the Navy's multiple endorsements, certain members of Congress chose to use Losey's case to pursue their own political agenda. They held hostage other Navy nominations until Losey's promotion recommendation was rescinded. The ransom for their congressional support was Brian Losey's career and, more importantly, his stellar reputation.

Mr. WOODALL. Madam Speaker, folks wonder sometimes what kind of men and women serve in this Chamber. And when I am asked, What did you learn new, ROB, that you didn't expect when you got to Congress, I talk about the caliber of the men and women who serve here.

If you have not had any time to spend with the gentleman from Montana, the former commander at Navy SEAL Team 6 spent 20 years serving his country in the SEALs and said: I have more leadership to provide. I want to run for Congress because I want to be able to make a difference in that way.

And he is making that difference here every day.

Madam Speaker, there is so much time where we spend tearing each other down and talking about all the problems that exist in Washington, and certainly, they are multiple. But to confront serious problems, you have to have serious people; and we do have serious people in this Chamber. Congressman ZINKE is one of those, and I am proud to serve with him, and I appreciate his leadership.

Madam Speaker, I want to talk about another topic that I think lets people—again, we can talk about all the challenges that exist in this country, but figuring out what the problem is and who to blame for it should not be our primary goal. Our primary goal should be solving those problems.

Madam Speaker, I want to talk about unleashing America's economic potential, and I want to talk about the FairTax. You know about the FairTax. The FairTax is not two words, as you know. FairTax is one word.

FairTax is the name of a bill in Congress. Not many bills in Congress command the notoriety that FairTax does, but it is H.R. 25. Anybody can pull it from congress.gov and read it. It is short, about 100 pages.

But it says, for Pete's sake, Madam Speaker, if we are going to try to make America competitive in the world, if we are going to try to create American jobs, if we are going to try to make America the country that you follow, if we are going to make America that leader in the world, what are we going to do it on?

Madam Speaker, if you want to create more jobs in America, you could depress salaries. We could pay everybody pennies, as some nations do, and try to create more jobs. That is an awful plan. That is not the right way.

If we wanted to create more jobs in America, we could stop caring about clean water and clean air and just throw our environment out with the job creation. But that is not what we want to do. That is a terrible idea.

Madam Speaker, as we sit here today, one thing that all the men and women in this Chamber control is the United States Tax Code. And the United States Tax Code, time and time again, is rated as the single worst Tax Code on the planet, the single worst Tax Code on the planet.

Once a week, you can open up a newspaper, find a story of a company leaving America to pursue incorporation outside of America's borders so that they can face a lower tax rate. And folks say: Oh, how unpatriotic; what an awful thing to do.

Madam Speaker, I would tell you that the law of the land requires them to do that. The law of the land says if you are the board of directors of a publicly traded corporation, you have a fiduciary duty to maximize return to shareholders. If you are trying to incorporate in a company that is punishing you, and you can go to a country that rewards you, you must make that. It is not optional. It is required.

So we can either try to pass laws that trap companies here, or we can try to pass laws that encourage every Nation on the planet to locate here. The FairTax does exactly that.

Madam Speaker, let me tell you a little bit about what the FairTax does. It is a fair chance for every American family to build a better life.

We talk so much about the income tax in this Chamber, but the truth is that 80 percent of American families pay more in payroll taxes than they do in income taxes.

All the time we spend complaining about the IRS, complaining about the American Tax Code, the Income Ta Code, it is the payroll tax that is th largest tax burden that 80 percent American families face.

If you are a millionaire, a billionair if you are running your own gian megacorporation, you can accept you salary any way you want to. You ca do it from capital gains, stock option You can have your privately held com pany pay you dividends. You have you choice about how you receive your ir come and, depending on what the Ta Code punishes and encourages, you ca manipulate your income accordingly.

Madam Speaker, but if you are th rank-and-file American middle clas family, you don't have a choice. Yo don't have capital gains or dividends o stock options to choose from. You ge a paycheck, and out of that paycheck the government takes the first dolla and it is 15.3 percent that the govern ment takes in payroll taxes alone.

□ 1230

Now, Madam Speaker, payroll taxe are a valuable tool in this country They fund the Medicare program, an they fund the Social Security program These are two very important pro grams to America, but they are bot threatened. The revenue stream fo those two programs is insufficient t fund the demands on those programs We have to find a better way.

The FairTax says: don't take th money out of an individual's paycheck The power to tax is the power to de stroy. When you tax productivity, yo destroy productivity. Rather than tax ing income, let's tax consumption.

We all wondered on April 15, Madan Speaker, what our neighbors paid in in come taxes. Don't you wonder? Mone magazine did a study one time. Fifteen different accountants worked on th same tax return, and they came u with 15 different answers. It was impos sible to figure out which one was right and none of those was the answer tha Money magazine came up with fo themselves. But you wonder what yo are neighbor is paying, and you wonde if they are paying their fair share.

What the FairTax says is we ar going to charge you not based on wha you produce but what you consume.

So if you have a brand-new Mercede sitting in your driveway, we think yo ought to be able to help fund the Amer ican way of life. If you have a use Ford Festiva sitting in your driveway maybe we ought to cut you some slack

If you have just built yourself a new 9-bedroom, 12-bathroom house, w think you ought to be able to afford t pay to help grow America. If you are a family of six living in a two-bedroom apartment, we think we ought to cu you some slack.

If you are working hard trying to im prove your life, don't punish produc tivity, as today's Tax Code does; ta folks based on consumption. That i not a crazy idea, Madam Speaker. I fact, America is one of the only OEC countries, one of the only industri alized countries that doesn't have a consumption tax.

Support Us!

10 U.S. Code § 624 - Promotions: how made

Current through Pub. L. 114-38 (http://www.gpo.gov/fdsys/pkg/PLAW-114publ38/html/PLAW-114publ38.htm). (See Public Laws for the current Congress (http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws).)

US Code (/uscode/text/10/624?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)
Notes (/uscode/text/10/624?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)
prev (/uscode/text/10/623) | next (/uscode/text/10/625)

(a)

(1) When the report of a selection board convened under section 611(a) of this title (/uscode/text/10/lii:usc:t:10:s:611:a) is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(3)

(A) Except as provided in subsection (d), officers on the active-duty list in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

Support Us!

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the active-duty list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title (/uscode/text/10/lii:usc:t:10:s:611:a) upon the convening of such a board.

(E) If the Secretary of the military department concerned determines that one or more officers or former officers were not placed on an all-fully-qualified-list under this paragraph because of administrative error, the Secretary may prepare a supplemental all-fully-qualified-officers list containing the names of any such officers for approval in accordance with this paragraph.

(b)

(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title (/uscode/text/10/lii:usc:t:10:s:741:d).

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)

(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title (/uscode/text/10/lii:usc:t:10:ch:60)to review the record of the officer;

(D) a criminal proceeding in a Federal or State court is pending against the officer; or

(E) substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned.

Support Us!

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, (/uscode/text/10/lii:usc:t:10:ch:60) if the officer is acquitted of the charges brought against him, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583 (/uscode/text/10/3583), 5947 (/uscode/text/10/5947), or 8583 (/uscode/text/10/8583) of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then unless action to delay an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 3583 (/uscode/text/10/3583), 5947 (/uscode/text/10/5947), or 8583 (/uscode/text/10/8583) of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583 (/uscode/text/10/3583), 5947 (/uscode/text/10/5947), or 8583 (/uscode/text/10/8583) of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to such grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be

Support Us!

delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added Pub. L. 96–513, title I (http://thomas.loc.gov/cgi-bin/bdquery/L?d096:./list/bd/d096pl.lst:513(Public_Laws)), § 105, Dec. 12, 1980, 94 Stat. 2857 (http://uscode.house.gov/statviewer.htm?volume=94&page=2857); amended Pub. L. 97–22 (http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:22(Public_Laws)), § 4(d), July 10, 1981, 95 Stat. 126 (http://uscode.house.gov/statviewer.htm?volume=95&page=126); Pub. L. 97–295 (http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:295(Public_Laws)), § 1(8), Oct. 12, 1982, 96 Stat. 1289 (http://uscode.house.gov/statviewer.htm?volume=96&page=1289); Pub. L. 98–525, title V (http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:525(Public_Laws)), § 526, Oct. 19, 1984, 98 Stat. 2525 (http://uscode.house.gov/statviewer.htm?volume=98&page=2525); Pub. L. 107–107, div. A, title V (http://www.gpo.gov/fdsys/pkg/PLAW-107publ107/html/PLAW-107publ107.htm), § 505(a)(1), (c)(2)(A), (d)(1), Dec. 28, 2001, 115 Stat. 1085 (http://uscode.house.gov/statviewer.htm?volume=115&page=1085), 1087, 1088; Pub. L. 107–314, div. A, title X (http://www.gpo.gov/fdsys/pkg/PLAW-107publ314/html/PLAW-107publ314.htm), § 1062(a)(2), Dec. 2, 2002, 116 Stat. 2649 (http://uscode.house.gov/statviewer.htm?volume=116&page=2649); Pub. L. 109–364, div. A, title V (http://www.gpo.gov/fdsys/pkg/PLAW-109publ364/html/PLAW-109publ364.htm), § 511(a), (d)(1), Oct. 17, 2006, 120 Stat. 2181 (http://uscode.house.gov/statviewer.htm?volume=120&page=2181), 2183; Pub. L. 110–181, div. A, title X (http://www.gpo.gov/fdsys/pkg/PLAW-110publ181/html/PLAW-110publ181.htm), § 1063(c)(3), Jan. 28, 2008, 122 Stat. 322 (http://uscode.house.gov/statviewer.htm?volume=122&page=322); Pub. L. 114–92, div. A, title V (http://www.gpo.gov/fdsys/pkg/PLAW-114publ92/html/PLAW-114publ92.htm), § 502(a), Nov. 25, 2015, 129 Stat. 806 (http://uscode.house.gov/statviewer.htm?volume=129&page=806).)

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

U.S. Code Toolbox

LII on your phone: Download on the App Store (https://itunes.apple.com/us/app/lawlibe/id403807492)

Law about... Articles from Wex (/wex/wex_articles)
Title 10 USC, RSS Feed (https://www.law.cornell.edu/uscode/rss/usc_update_10.rss)
Table of Popular Names (/topn)
Parallel Table of Authorities (/ptoa)

7

Find a Lawyer

About LII
(/lii/about/about_lii)

§1034. Protected communications; prohibition of retaliatory personnel actions

(a) Restricting Communications With Members of Congress and Inspector General Prohibited.—

(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) Prohibition of Retaliatory Personnel Actions.—

(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted;

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command;

(v) a court-martial proceeding; or

(vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or

(C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

(2) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action, or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade, and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) Inspector General Investigation of Allegations of Prohibited Personnel Actions.—

(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (4).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of sections 920 through 920c of this title (articles 120 through 120c of the Uniformed Code of Military Justice), sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(C) A threat by another member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property.

(3) A communication described in paragraph (2) shall not be excluded from the protections provided in this section because—

(A) the communication was made to a person who participated in an activity that the member

reasonably believed to be covered by paragraph (2);
(B) the communication revealed information that had been previously disclosed;
(C) of the member's motive for making the communication;
(D) the communication was not made in writing;
(E) the communication was made while the member was off duty: and
(F) the communication was made during the normal course of duties of the member.

(4)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.
(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).
(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.
(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.
(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(5) Neither an initial determination under paragraph (3)(A) nor an investigation under paragraph (3)(D) is required in the case of an allegation made more than one year after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(6) The Inspector General of the Department of Defense, or the Inspector General of the Department of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is one or both of the following:
(A) Outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.
(B) At least one organization higher in the chain of command than the organization of the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) Inspector General Investigation of Underlying Allegations.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A), (B), or (C) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) Reports on Investigations.—
(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to such Secretaries, and the copy of the report shall be

transmitted to the memb not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General with. a military department, after approval of the report of that investigation under subsection (c)(4)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—
(A) of that determination (including the reasons why the report may not be submitted within that time); and
(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) Action in case of violations—
(1) Not later than 30 days after receiving a report from the Inspector General under subsection (e), the Secretary of Homeland Security or the Secretary of the military department concerned, as applicable, shall determine whether there is sufficient basis to conclude whether a personnel action prohibited by subsection (b) has occurred.

(2) If the Secretary concerned determines under paragraph (1) that a personnel action prohibited by section (b) has occurred, the Secretary shall—
(A) order such action as is necessary to correct the record of a personnel action prohibited by subsection (b); and
(B) take any appropriate disciplinary action against the individual who committed such prohibited personnel action.

(3) If the Secretary concerned determines under paragraph (1) that an order for corrective or disciplinary action is not appropriate, not later than 30 days after making the determination, such Secretary shall—
(A) provide to the Secretary of Defense and the member or former member a notice of the determination and the reasons for not taking action; and
(B) when appropriate, refer the report to the appropriate board for the correction of military records for further review under subsection (g).

(g) Correction of Records When Prohibited Action Taken.—
(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—
(A) shall review the report of the Inspector General submitted under subsection (e)(1);
(B) may request the Inspector General to gather further evidence; and
(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board holds an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the member or former member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(h) Review by Secretary of Defense.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(i) Regulations.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(j) Definitions.—In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

(2) The term "Inspector General" means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

SEC. 505. CLARIFICATION OF DEADLINE FOR RECEIPT BY PROMOTION SELECTION BOARDS OF CERTAIN COMMUNICATIONS FROM ELIGIBLE OFFICERS.

(a) OFFICERS ON ACTIVE-DUTY LIST.—Section 614(b) of title 10, United States Code, is amended in the first sentence by inserting "the day before" after "not later than".

(b) OFFICERS ON RESERVE ACTIVE-STATUS LIST.—Section 14106 of such title is amended in the second sentence by inserting "the day before" after "not later than".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 1, 2006, and shall apply with respect to selection boards convened on or after that date.

SEC. 506. FURNISHING TO PROMOTION SELECTION BOARDS OF ADVERSE INFORMATION ON OFFICERS ELIGIBLE FOR PROMOTION TO CERTAIN SENIOR GRADES.

(a) OFFICERS ON ACTIVE-DUTY LIST.—

(1) IN GENERAL.—Section 615(a) of title 10, United States Code, is amended—

(A) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and

(B) by inserting after paragraph (2) the following new paragraph (3):

"(3) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).".

(2) CONFORMING AMENDMENTS.—Such section is further amended—

(A) in paragraph (4), as redesignated by paragraph (1)(A) of this subsection, by striking "paragraph (2)" and inserting "paragraphs (2) and (3)";

(B) in paragraph (5), as so redesignated, by striking "and (3)" and inserting ", (3), and (4)";

(C) in paragraph (6), as so redesignated—

(i) in the matter preceding subparagraph (A), by inserting ", or in paragraph (3)," after "paragraph (2)"; and

(ii) in subparagraph (B), by inserting "or (3), as applicable" after "paragraph (2)"; and

(D) in subparagraph (A) of paragraph (7), as so redesignated, by inserting "or (3)" after "paragraph (2)(B)".

(b) RESERVE OFFICERS.—

(1) IN GENERAL.—Section 14107(a) of title 10, United States Code, is amended—

(A) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and

(B) by inserting after paragraph (2) the following new paragraph (3):

"(3) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, any credible information of an adverse nature, including any

(3) An officer who is on the ADL and is on a promotion list as the result of selection for promotion by an ADL promotion board and who before being promoted is removed from the ADL and placed on the RASL of the same armed force and in the same competitive category (including a Regular officer who on removal from the ADL is appointed as a Reserve officer and placed on the RASL) shall be placed on an appropriate RASL promotion list.

d. CNO and CMC shall prescribe monthly numbers, by competitive category and grade, of officers to be promoted and shall announce the names of those officers promoted from the approved promotion list within the monthly numbers authorized.

e. Authority to prescribe monthly numbers and announce promotions may be delegated to those appropriate agencies under the cognizance of CHNAVPERS or Deputy Commandant for Manpower and Reserve Affairs (DC)(M&RA)).

22. Effective Dates of Promotion. Except as provided in paragraph 23 or as otherwise provided by law, the date of rank of an officer promoted to a higher grade under sections 624 or 12203 of reference (a), and this instruction is the date of appointment. Appointments will be considered accepted and effective on the date specified in the promotion NAVADMIN or MARADMIN unless the officer concerned expressly declines the appointment. Officers must decline the appointment within 30 days of the effective date. An officer's written request for declination must be submitted to NAVPERSCOM (PERS-4802), 5720 Integrity Drive, Millington TN 38055-0801 or the CMC, Headquarters U.S. Marine Corps (MMPR-1), Harry Lee Hall, 17 Lejeune Road, Quantico, VA 22134-5401, as appropriate. The appointment will be deemed effective unless the request for declination is received by the 30th day. Officers on a promotion list who voluntarily request retirement or discharge from the ADL or RASL prior to the effective date of promotion are not required to decline the appointment in writing. The officer's retirement or discharge will constitute declination of appointment.

23. Delay of Promotion

a. Criteria for Promotion Delay. CHNAVPERS or CMC (or designee), as appropriate, or a member's commanding officer

(CO), may delay the appointment of an officer selected for promotion. If the appointment is delayed, the delaying officer shall, as soon as practicable, forward the information required by paragraph 23b to SECNAV, or designee, for ratification. Promotion may be delayed under this instruction if:

(1) Sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of.

(2) An investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer.

(3) Processing for separation for cause has been initiated under reference (k).

(4) A criminal proceeding in a Federal or State court is pending against the officer.

(5) There is cause to believe that the officer is mentally, physically, morally, or professionally unqualified.

(6) A Reserve officer who has not completed a baccalaureate degree by a qualifying educational institution.

b. Command Requests for Delay

(1) COs who consider delay of an officer's promotion warranted and delay an officer's promotion, shall submit justification for the delay to SECNAV via, NAVPERSCOM (PERS-4833), or CMC (MMPR-1) as appropriate, immediately and prior to the members promotion or as soon thereafter as practicable.

(2) Each justification for delay to SECNAV, or designee, must include the following documents:

(a) A copy of the notification to the officer.

(b) A statement by the officer. If the officer declines to make a statement, the officer concerned shall submit a signed statement to that effect.

(c) Supporting rationale for delay from the officer's CO based on their knowledge of the officer involved.

(d) A recommendation by CHNAVPERS or DC (M&RA), as appropriate.

c. Notification of Grounds for Delay. The promotion of an officer may be delayed only if the officer has been given written notice of the grounds for the delay before the effective date of the appointment, unless it is impractical to do so, in which case such written notice shall be given as soon as practicable.

d. Limitations on Delay. The promotion of an officer may not be delayed under this paragraph for more than 6 months after the date on which the officer would otherwise have been promoted, unless SECNAV, or designee, specifies a further period of delay. CHNAVPERS or CMC will submit timely requests, with supporting rationale, for any extension of delay of promotion. An officer's promotion may not be delayed more than 90 days after final action has been taken in any criminal case against the officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial against the officer, or more than 18 months after the date on which the officer would otherwise have been promoted, whichever is later.

e. Removal from the Promotion List. If during a delay of promotion, it is determined that removal from the promotion list is appropriate, removal action under paragraph 17 may be initiated. Although removal action is contemplated, requests for delay extensions as provided in paragraph 23d shall be submitted as necessary until the officer's name is removed from the promotion list.

f. Subsequent Promotion

(1) If a promotion has been delayed under paragraph 23a(1)-23a(4) and no action has been taken to delay an appointment under paragraph 23a(5); and

(a) no disciplinary action is taken against the officer, charges against the officer are withdrawn or dismissed,

(b) the officer is not ordered administratively separated under reference (k); or

(c) the officer is acquitted of the charges brought against him or her, the officer shall be retained on the promotion list and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted and the same position on the ADL or RASL as they would have had if no delay had occurred, except as provided in paragraph 23f(2).

(2) If SECNAV determines that the officer was unqualified for promotion for any part of the delay, the date of rank, effective date of pay and allowances, and position on the ADL or RASL may be adjusted. Officers whose promotions were delayed under paragraph 23a(5) that SECNAV later determines are qualified, shall be promoted in the same manner.

24. Special Selection Boards

a. Sections 573, 611, and 14101 of reference (a), references (o) and (p), and this instruction prescribe rules and procedures for convening promotion selection boards to consider eligible officers on the ADL and RASL of the Navy and Marine Corps for promotion to the next higher grade. Per section 12242 of reference (a) and reference (l), those policies and procedures will also be extended, in the manner described in this instruction, to Reserve warrant officers requesting special selection boards. When because of administrative error, the record of an officer or former officer above or in the promotion zone is not considered by a promotion selection board or the name of an officer who should have been placed on an AFQOL, SECNAV is required to convene a special selection board per section 628(a) or 14502(a) of reference (a), as implemented by reference (b), to consider that officer for promotion.

b. SECNAV is authorized per sections 628(b) and 14502(b) of reference (a), and encouraged by reference (l), paragraph 4.2, to convene a special selection board to consider cases of officers or former officers who were in or above the promotion zone before a promotion selection board, and considered, but not selected by the board, if SECNAV determines that the action of that board was contrary to law, or involved material error of

Support Us!

10 U.S. Code § 741 - Rank: commissioned officers of the armed forces

Current through Pub. L. 114-38 (http://www.gpo.gov/fdsys/pkg/PLAW-114publ38/html/PLAW-114publ38.htm). (See Public Laws for the current Congress (http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws).)

US Code (/uscode/text/10/741?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)

Notes (/uscode/text/10/741?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)

prev (/uscode/text/10/722) | next (/uscode/text/10/742)

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the Army, Navy, Air Force, and Marine Corps of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(d)

(1) The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment and who at the time of such appointment was awarded service credit for prior

Support Us!

commissioned service or constructive credit for advanced education or training, or special experience shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, or Marine Corps who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W–5, or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list or reserve active-status list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience. The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title (/uscode/text/10/lii:usc:t:10:s:14317:b).

(4)

(A) The Secretary concerned may adjust the date of rank of an officer appointed under section 624(a) of this title (/uscode/text/10/lii:usc:t:10:s:624:a) to a higher grade that is not a general officer or flag officer grade if the appointment of that officer to that grade is delayed from the date on which (as determined by the Secretary) it would otherwise have been made by reason of unusual circumstances (as determined by the Secretary) that cause an unintended delay in—

(i) the processing or approval of the report of the selection board recommending the appointment of that officer to that grade; or

(ii) the processing or approval of the promotion list established on the basis of that report.

(B) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be consistent—

(i) with the officer's position on the promotion list for that grade and competitive category when additional officers in that grade and competitive category were needed; and

(ii) with compliance with the applicable authorized strengths for officers in that grade and competitive category.

Support Us!

(C) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be the effective date for—

(i) the officer's pay and allowances for that grade; and

(ii) the officer's position on the active-duty list.

(D) When under subparagraph (A) the Secretary concerned adjusts the date of rank of an officer in a grade to which the officer was appointed by and with the advice and consent of the Senate and the adjustment is to a date before the date of the advice and consent of the Senate to that appointment, the Secretary shall promptly transmit to the Committee on Armed Services of the Senate a notification of that adjustment. Any such notification shall include the name of the officer and a discussion of the reasons for the adjustment of date of rank.

(E) Any adjustment in date of rank under this paragraph shall be made under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33 (http://uscode.house.gov/statviewer.htm?volume=70A&page=33); Pub. L. 96–513, title I (http://thomas.loc.gov/cgi-bin/bdquery/L?d096:./list/bd/d096pl.lst:513(Public_Laws)), § 107, Dec. 12, 1980, 94 Stat. 2869 (http://uscode.house.gov/statviewer.htm?volume=94&page=2869); Pub. L. 97–22 (http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:22(Public_Laws)), § 4(h), July 10, 1981, 95 Stat. 127 (http://uscode.house.gov/statviewer.htm?volume=95&page=127); Pub. L. 97–86, title IV (http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:86(Public_Laws)), § 405(b)(8), Dec. 1, 1981, 95 Stat. 1106 (http://uscode.house.gov/statviewer.htm?volume=95&page=1106); Pub. L. 97–295 (http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:295(Public_Laws)), § 1(11), Oct. 12, 1982, 96 Stat. 1289 (http://uscode.house.gov/statviewer.htm?volume=96&page=1289); Pub. L. 98–557 (http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:557(Public_Laws)), § 25(c), Oct. 30, 1984, 98 Stat. 2873 (http://uscode.house.gov/statviewer.htm?volume=98&page=2873); Pub. L. 99–145, title V (http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:145(Public_Laws)), § 514(b)(8), Nov. 8, 1985, 99 Stat. 629 (http://uscode.house.gov/statviewer.htm?volume=99&page=629); Pub. L. 102–190, div. A, title XI (http://thomas.loc.gov/cgi-bin/bdquery/L?d102:./list/bd/d102pl.lst:190(Public_Laws)), § 1131(1)(A), Dec. 5, 1991, 105 Stat. 1505 (http://uscode.house.gov/statviewer.htm?volume=105&page=1505); Pub. L. 103–337, div. A, title XVI (http://thomas.loc.gov/cgi-bin/bdquery/L?d103:./list/bd/d103pl.lst:337(Public_Laws)), § 1626, Oct. 5, 1994, 108 Stat. 2962 (http://uscode.house.gov/statviewer.htm?volume=108&page=2962); Pub. L. 104–106, div. A, title XV (http://www.gpo.gov/fdsys/pkg/PLAW-104publ106/html/PLAW-104publ106.htm), § 1501(a)(3), Feb. 10, 1996, 110 Stat. 495 (http://uscode.house.gov/statviewer.htm?volume=110&page=495); Pub. L. 107–107, div. A, title V (http://www.gpo.gov/fdsys/pkg/PLAW-107publ107/html/PLAW-107publ107.htm), § 506(a), Dec. 28, 2001, 115 Stat. 1089 (http://uscode.house.gov/statviewer.htm?volume=115&page=1089).)

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

U.S. Code Toolbox

LII on your phone: Download on the App Store (https://itunes.apple.com/us/app/lawlibe/id403807492)