



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 00359-99
30 August 1999

CAPT [REDACTED] RET

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 4 May 1999 with enclosure, a copy of which is attached. The Board also considered your letter dated 20 June 1999 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the advisory opinion, although they disapproved of its tone. The Board was unable to find the rescheduling of the FY00 Line Rear Admiral (Lower Half) Selection Board was unwarranted. They did not find it objectionable that you were not considered for continuation, since you were not eligible. They found ALNAV 095/98 did not retroactively continue you; it merely established you would have been in the promotion zone for the FY00 Naval Reserve Line Rear Admiral (Lower Half) Selection Board, had you not been retired before that board convened. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

1401
NPC 86
4 May 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters, (Pers-OOZCB/NPC-OOZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
CAPTAIN [REDACTED] USNR, RET, [REDACTED]

Ref: (a) Your memo 5420 Pers-OOZCB/NPC-OOZCB of 30Apr99
(b) Title 10, United States Code

Encl: (1) BCNR File 00359-99 w/Microfiche Service Record
(2) NPC-911 memo 5730 of 12Jan99

1. Per reference (a), we are returning enclosure (1) with the following observations and recommendation that Captain [REDACTED] petition be denied.

2. Captain [REDACTED] requested continuation in an active status in order to be considered by the FY-00 Naval Reserve O-7 Line Promotion Board which convened on 8 February 1999. A previous request by Captain [REDACTED] via a congressional action was denied. The reasons for the negative response remain the same and are restated here in full.

3. The FY-00 Reserve Rear Admiral Line Promotion Board was originally scheduled for 16 November 1998. Due to administrative concerns, the board was rescheduled for 8 February 1999. This rescheduling was in full compliance with all applicable statutes and directives. The board was rescheduled to ensure the integrity of the selection board process was maintained and that each eligible officer could be fairly considered for promotion.

4. Promotion opportunity and timing are determined by the Secretary of the Navy and often vary based on the needs of the Navy. The board was delayed in order to preserve the integrity of the board process. It is regrettable that Captain [REDACTED] was not eligible based on the rescheduling of the board, but NPC-86 finds his arguments are without legal merit. If the board had been originally scheduled for 8 February 1999, what legal objection would Captain [REDACTED] have in that case?

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
CAPTAIN [REDACTED], USNR, RE [REDACTED]

5. In response to Captain [REDACTED] previous congressional, NPC-86 had recommended that his case be forwarded to NPC-911 for comment. NPC-911 is responsible for Naval Reserve Continuation Boards. In accordance with guidance provided by the Secretary of the Navy, a board, convened under Section 611 or 14101 of reference (b), may recommend for continuation on the Reserve Active Status List, commissioned officers serving in the grade of O-6, who possess specific skills required by the Navy in number not in excess of those prescribed by the Secretary of the Navy. Depending on the requirements of the Navy for officers with particular skills, the Secretary of the Navy may convene boards under Section 611 or 14101 of reference (b). These boards may continue commissioned officers subject to removal from the Reserve Active Status List under section 14507 of reference (b) for up to a maximum of 35 years of commissioned service, as prescribed in Section 14701 of reference (b).

6. NPC-911 was best suited to determine if Captain [REDACTED] met any of the criteria outlined above. Accordingly, enclosure (2) noted that Captain [REDACTED] was not eligible for continuation. Consequently, Captain [REDACTED] retirement request was processed effective 1 December 1998 and thus was not eligible to be put before the Reserve O-7 Line Promotion Board.

7. Captain [REDACTED] service to his country is laudable and he can be justifiably proud of his record and contributions; the negative response to his request does not detract from his honorable service to this nation and the United States Navy.

[REDACTED SIGNATURE]

Director, Naval Reserve Officer
Promotion, Appointments and
Enlisted Advancements Division



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

5730
NPC-911
12 Jan 99

MEMORANDUM FOR THE SPECIAL ASSISTANT, CONGRESSIONAL LIAISON
OFFICE (PERS-OOXC)

Subj: REQUEST FOR INFORMATION ICO CAPT [REDACTED]
USNR (RET) [REDACTED]

Ref: (a) Your NAVPERS 5730/5 of 30 Dec 98

Encl: (1) Congressional File
(2) ACNP for Naval Reserve Personnel Management ltr
of 12 Jan 99

1. Per reference (a), enclosure (1) is returned with the following comments concerning CAPT [REDACTED] use. CA [REDACTED] is requesting continuation in an active status in order to be considered by the FY-00 Naval Reserve O-7 Line Promotion Board which will convene in February 1999.

2. CAP [REDACTED] is a Retired Naval Reserve officer, having transferred to the Retired Reserve after serving 30 years of commissioned service. Per Title 10, U.S. Code, Chapter 1407, captains who attain 30 years of commissioned service are required to transfer to the Retired Reserve, if eligible and requested, or be honorably discharged on the first day of the month after completing such service. CAP [REDACTED] reached 30 years of commissioned service in November 1998 and was notified of his required attrition. He requested and was transferred to the Retired Reserve on 1 December 1998.

3. The Secretary of the Navy is authorized to continue certain officers to meet mobilization requirements and special skill needs. In his FY-99 Retention and Continuation Plan, SECNAV did not authorize retention or continuation of Special Duty Officers (Intelligence). Accordingly, CA [REDACTED] is not eligible for continuation and his retirement request was processed effective 1 December 1998.

Subj: REQUEST FOR INFORMATION ICO CAPT [REDACTED]
USNR (RET), [REDACTED]

4. CAPT [REDACTED] also contacted [REDACTED] (NPC-9) and his response, enclosure (2), is provided for your review. Point of contact for further information is [REDACTED] at (901) [REDACTED]

[REDACTED]

Director, Naval Reserve Personnel
Administration Division