



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

HD:hd
Docket No: 02158-01
4 September 2001

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

Subj: LCDR [REDACTED] USNR, RET [REDACTED]
REVIEW OF NAVAL RECORD (RECONSIDERATION)

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

Encl: (1) Subject's recon req dtd 15 Feb 01
(2) Pertinent documents from BCNR file
on Subject's prior case, docket no 6733-00
(3) PERS-86 memo dtd 20 Apr 01
(4) Subject's memo dtd 24 May 01
(5) Subject's memo dtd 16 Jun 01
(6) PERS-86B memo dtd 9 Aug 01
(7) Memo for Record dtd 13 Aug 01
(8) Memo for Record dtd 29 Aug 01
(9) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting reconsideration of his case. As indicated in enclosure (2), on 11 January 2001, the Board denied Petitioner's original application, seeking a special selection board for the Fiscal Year (FY) 00 Naval Reserve TAR (Training and Administration of Reserves) Line Commander Selection Board, and impliedly requesting removal of his failures of selection by the FY 00 and 01 Naval Reserve TAR Line Commander Selection Boards. Because of the failures of selection for promotion, he was involuntarily retired on 1 January 2001.

2. The Board, consisting of Messrs. Adams and Goldsmith and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 30 August 2001. Pursuant to the Board's regulations, the majority, Messrs. Adams and Goldsmith, determined that the corrective action indicated below should be taken on the available evidence of record. The minority, Ms. LeBlanc, recommended that Petitioner's request be denied. 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 which were available under existing law and regulations within the Department of the Navy.

b. In his original application, Petitioner contended that the FY 00 promotion board precept required an active duty intelligence tour for his 1637 TAR intelligence community; that this community has only two such tours available; that it is not possible for all 1637 officers to rotate through these two tours before their consideration for promotion to commander; and that he has had many "equivalent" tours of duty which, if briefed as equivalent tours, would have resulted in his being selected. PERS-86, the director of the Navy Personnel Command (NPC) office with cognizance over Naval Reserve officer promotions, recommended denying his petition on the basis that the FY 00 promotion board precept included no active duty intelligence tour requirement for the 1637 TAR intelligence community. Petitioner responded by providing evidence showing that such a requirement was in the community brief, rather than the precept. This Board denied relief, on the basis that his letters to the FY 00 and 01 promotion boards could have mentioned that he had not been given a chance for an active duty intelligence tour. They further observed that he still had not completed such a tour, so to the extent completing such a tour was a requirement for promotion, a special selection board should not find him qualified.

c. In his request for reconsideration, Petitioner stated that the 1637 community brief has been changed by dropping the requirement for an active duty intelligence tour, so it no longer unfairly discriminates against direct commission officers like himself, but the change was made too late to allow him fair consideration for promotion.

d. In the advisory opinion at enclosure (3), PERS-86 recommended denying Petitioner's reconsideration request. This opinion included the following:

[Petitioner's] assertion that the TAR Intelligence Officer Community brief stated an active duty tour is required for promotion to Commander is true. However, community briefs are general career guidelines for the selection boards not mandates. Officers who deviate from traditional career paths are routinely selected when their performance merits selection.

e. Petitioner's memorandum to this Board at enclosure (4) took exception to the unfavorable portion of the PERS-86 opinion, and he requested that one or two reserve intelligence members of his promotion board be relieved from their oath of secrecy concerning board deliberations to disclose why he was not selected. He specifically requested that three named captains be interviewed.

f. Petitioner's memorandum for the Secretary of the Navy at enclosure (5) requests that three members of his FY 01 promotion board, the same three captains named in his memorandum to this Board at enclosure (4), be released from their oath so they might give information that would be helpful to his application to this Board. He stated that the information needed by the Board had nothing to do with the promotion board's deliberations,

but rather with the impact the 1637 community brief had on unfairly eliminating his record from consideration.

g. Enclosure (6) is an advisory opinion from PERS-86B, the deputy director of the NPC office responsible for Naval Reserve officer promotions, recommending that Petitioner's request for a special selection board be approved. This opinion stated that review of his application since submission of the unfavorable PERS-86 opinion at enclosure (3) "has led us to believe that inaccurate information relating to the Naval Reserve Intelligence community career tracks may have been presented to board members" and that "This information appears to have been received as directive in nature by at least one board member and consequently prevented a fair assessment of [Petitioner's] record."

h. The memorandum for the record at enclosure (7) documents a telephone conversation between the deputy director who submitted the advisory opinion at enclosure (6) and a member of the Board's staff. This memorandum records that the deputy director clarified he was recommending not only that Petitioner be granted a special selection board, but also that his failures of selection before the FY 00 and 01 promotion boards be removed. He further clarified that he was recommending that Petitioner also have a special selection board for FY 01, should he be unsuccessful before his special selection board for FY 00.

i. The memorandum for the record at enclosure (8) documents a telephone conversation between the deputy director and another member of the Board's staff. This memorandum records the deputy director indicated that if this Board approves his recommendation for a special selection board, they should expressly recommend that the special board be conducted so as to make it clear that completion of an active duty intelligence tour is not a requirement for promotion. This memorandum further records he stated that the promotion board member mentioned in his opinion at enclosure (6) was Captain B --- , one of the officers identified by Petitioner's memo at enclosure (5) as a member of the FY 01 promotion board (Captain B -- 's statement of 13 December 2000, to the effect that the 1637 community brief indicated an active duty intelligence tour was required, is the last document at enclosure (2)); and that his basis for recommending removal of both failures of selection for promotion was that both promotion boards used a 1637 community brief with language to the effect that an active duty intelligence tour was a requirement for promotion, such language having potential to mislead board members into believing that an officer without such a tour could not be selected for promotion. Finally, this memorandum records the deputy director stated that the community briefs for past promotion boards are not retained as part of their records of proceedings.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the PERS-86B advisory opinion at enclosure (6) and the memoranda for the record at enclosures (7) and (8), the majority of the Board recommends the following corrective action.

MAJORITY RECOMMENDATION:

- a. That Petitioner's naval record be corrected by removing his failures of selection before the FY 00 and 01 Naval Reserve TAR Line Commander Selection Boards.
- b. That his naval record be corrected further to show that he was not retired on 1 January 2001, but served continuously after that date; and that he be reinstated to active duty as a TAR officer accordingly.
- c. That he be granted a special selection board for the FY 00 Naval Reserve TAR Line Commander Selection Board and, if necessary, for the FY 01 Naval Reserve TAR Line Commander Selection Board, conducted as to make clear that completion of an active duty intelligence tour is not a requirement for promotion.
- d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- e. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

MINORITY CONCLUSION:

The minority of the Board is not persuaded that relief is warranted, absent input from all members of both promotion boards as to their interpretation of the community brief. Accordingly, the minority's recommendation is as follows:

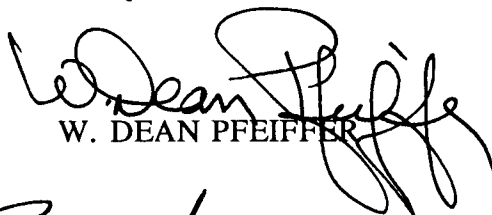
MINORITY RECOMMENDATION:

- a. That Petitioner's application be denied.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

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


W. DEAN PFEIFFER

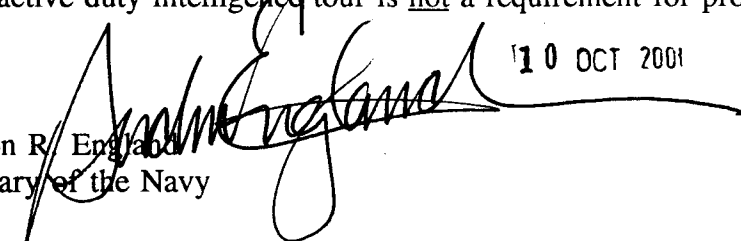
MAJORITY REPORT

Reviewed and approved:

 10/03/01

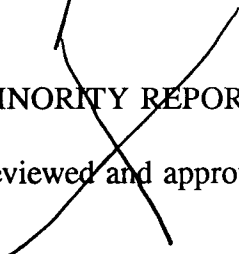
Special selection board for FY 00 Naval Reserve TAR Line Commander Selection Board and, if necessary, for FY 01 Selection Board, conducted as to make it clear that completion of an active duty intelligence tour is not a requirement for promotion, is approved:

Gordon R. England
Secretary of the Navy

 10 OCT 2001

MINORITY REPORT

Reviewed and approved: _____





DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-86

20 APR 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT COMMANDER [REDACTED]
[REDACTED]

Encl: (1) BCNR File 06733-00 w/Service Record

1. We are returning enclosure (1) with the following
observation and the recommendation that Lieutenant Commander
[REDACTED]'s petition be denied.

2. Lieutenant Commander [REDACTED] assertion that the
TAR Intelligence Officer Community brief stated an active duty
tour is required for promotion to Commander is true. However,
community briefs are general career guidelines for the selection
boards not mandates. Officers who deviate from traditional
career paths are routinely selected when their performance
merits selection. In Lieutenant Commander [REDACTED] case,
he did not transition from the Selected Reserves to active duty
as a TAR Intelligence Officer until he was a Lieutenant. He,
like any officer who transfers from one competitive category to
another, incurs the risk of not attaining career milestones in
time for promotion boards.

3. Specific reasons for Lieutenant Commander [REDACTED]
failures to promote are not available since proceedings of the
selection boards are sensitive in nature and records of
deliberations are not kept. It is our opinion that his record
was simply not considered competitive enough when considered
within the numerical constraints placed on the board.

[REDACTED]

Director, Reserve Officer
Promotions, Appointments, and
Enlisted Advancement Division

2150
A/O rcd - 5/2/01



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-86B
09 AUG 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT COMMANDER [REDACTED]

Encl: (1) BCNR File 06733-00 w/Service Record

1. We are returning enclosure (1) with a revision to our original response. We recommend that Lieutenant Commander [REDACTED] petition for a Special Selection board be approved.

2. Subsequent review of Lieutenant Commande [REDACTED] petition has led us to believe that inaccurate information relating to the Naval Reserve Intelligence community career tracks may have been presented to board members. This information appears to have been received as directive in nature by at least one board member and consequently prevented a fair assessment of Lieutenant Command [REDACTED] record. If his petition is approved, we will recommend to the Secretary of the Navy that he be given a Special Selection Board.

[REDACTED]

Deputy Director, Reserve
Officer Promotions,
Appointments, and Enlisted
Advancement Division

HD:hd
Docket No. 02158-01
13 August 2001

MEMORANDUM FOR THE RECORD

Subj: LIEUTENANT COMMANDER [REDACTED], USNR,
[REDACTED]

1. This memorandum for the record is to document a phone conversation between the Deputy Director, Reserve Officer Promotions and this Staff member. I made the phone call to ensure that Commander [REDACTED] knew that he was recommending the subject officer relief from his failures of selection from the FY 00 and 01 boards.

2. Commander [REDACTED] indicated that he knew this was included and that he failed to include it in the advisory opinion. He also indicated that they want subject officer to be recommended for special boards for each fiscal year, just in case he fail selection for FY 00, they want to give him another chance at the FY 01 board also and that this would happen without the subject officer applying again to BCNR in case he does fail the first board.

[REDACTED]

Examiner

29 August 2001

MEMO FOR RECORD

Re: Case of [REDACTED], III, USNR (RET), do [REDACTED]

On this date, I contacted [REDACTED] Deputy Director, Reserve Officer Promotions to determine what guidance, if any, he felt this Bd should provide as to how a special sel bd proceeding for [REDACTED] should be conducted, if approved. He indicated he felt the Bd should expressly recommend that the special bd be conducted so as to make it clear that completion of an active duty intelligence tour is not a requirement for promotion.

He also stated that the promotion bd member mentioned in his advisory opinion of 9 Aug 01 v [REDACTED] identified by [REDACTED] ltr of 16 Jun 01 as a member of the FY 01 Naval Reserve Line CDR TAR Sel Bd), and that his basis for recommending relief regarding both the FY 00 and 01 promotion bds was that both used a 1637 community brief with language to the effect that an active duty intelligence tour was a requirement for promotion, such language having potential to mislead bd members into believing that an officer without such a tour could not be selected for promotion.

Finally, he stated that the community briefs for past promotion bds are not retained as part of their records of proceedings.

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Head, Performance Section