



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

HD:hd
Docket No: 06129-00
20 July 2001

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

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

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

Encl: (1) DD Form 149 dtd 28 Aug 00 w/attachments
(2) PERS-85 memo dtd 12 Sep (sic) 00
(3) Subject's ltr dtd 5 Jun 01 w/enclosures
(4) PERS-85 memo dtd 27 Jun 01
(5) Subject's naval record

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 show the lineal position, date of rank, and effective date in the grade of lieutenant commander he would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 00 Lieutenant Commander Staff Corps Selection Board, vice the FY 01 Lieutenant Commander Staff Corps Selection Board. His current date of rank and effective date are 1 November 2000.

2. The Board, consisting of Messrs. Kastner and Mazza and Ms. Wiley, reviewed Petitioner's allegations of error and injustice on 19 July 2001, 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. PERS-85, the Navy Personnel Command (NPC) office with cognizance over the subject matter of this case, has provided two advisory opinions. In the first, at enclosure (2), they commented to the effect that Petitioner's request should be disapproved. They stated that he was deferred from consideration by the FY 00 Lieutenant Commander Staff Corps Selection Board because this promotion board convened within a year after he

commenced active duty; that he was notified he would be automatically deferred if he did not request a waiver of deferment; and that they had no record of his having requested a waiver.

c. By correspondence at enclosure (3), Petitioner rebutted the unfavorable advisory opinion. He provided supporting documentation including a copy of his request to waive deferment of consideration for promotion.

d. In their second opinion at enclosure (4), PERS-85 recommend that Petitioner's request be granted, and that his lieutenant commander date of rank (and by implication, effective date) be adjusted to 1 February 2000. They acknowledged that he was, in fact, considered by the FY 00 promotion board, but because an error in his lieutenant date of rank had not yet been corrected, he was erroneously considered below the promotion zone, rather than in the zone. They further stated it could be reasonably assumed that he would have been selected for promotion, had he been considered in the zone.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting the following corrective action:

RECOMMENDATION:

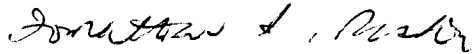
a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of lieutenant commander as 1 February 2000 vice 1 November 2000; and that his lineal precedence be adjusted accordingly.

b. That any material or entries inconsistent with 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.

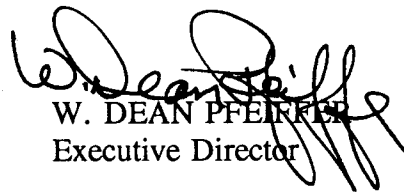
c. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

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 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
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



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

0129-00

5420
PERS-85
12 Sep 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] MC, USNR, [REDACTED]

Ref: (a) SECNAVINST 1420.1A of 8 Jan 91
(b) CHNAVPERS WASHINGTON DC msg dtg 031022Z MAR 98

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of [REDACTED]'s request.

2. [REDACTED] date of rank was changed from 4 Dec 94 to 9 May 94 prior to the convening of the FY-00 Lieutenant Commander Medical Corps Selection Board. He did not go before the board because he was gained on active duty on 26 May 98. When officers report to active duty they are deferred from consideration by promotion selection boards as outlined in reference (a) for one year unless they specifically request waiver of deferral. [REDACTED] was notified in reference (b) that he would be automatically deferred unless he specifically requested that he be considered. Our office has no letter on file from [REDACTED] requesting that he be considered. The board convened on 24 May 99 before [REDACTED] was eligible.

[REDACTED]

BCNR Liaison, Officer Promotions and
Enlisted Advancements Division

6129-00



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

5420
PERS-85
27 Jun 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: CORRECTED ADVIORY OPINION ICO [REDACTED]
US [REDACTED]

Ref: (a) SECNAVINST 1420.1A of 8 Jan 91
(b) CHNAVPERS WASHINGTON DC msg dtd 031022Z MAR 98

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending approval of [REDACTED] request.
2. According to our records, a corrected Officer Acceptance and Oath of Office (NAVPERS 1000/4) was sent to [REDACTED] on 15 April 1999 to correct his date of rank from 4 Dec 94 to 9 May 94. He signed it and dated it with his original commissioning date of 26 May 1998 and returned it to Navy Personnel Command, however it was not received and processed until 20 August 1999. Although [REDACTED] signed his corrected A&O with new date of rank prior to the board, the A&O was not received and affected until after the FY-00 O-4 Medical Corps Selection Board convened on 24 May 1999. Thus, [REDACTED] was considered below-zone by the FY-00 O-4 Medical Corps Selection Board and not in-zone as he should have been.
3. [REDACTED] did send a letter to the FY-00 LCDR Medical Corps Board requesting to be considered by the board and included some additional data that was missing from his record. Had [REDACTED] date of rank change been received prior to the board and his status changed to an in-zone eligible officer, it could be reasonably assumed that he would have selected for promotion. Recommend the [REDACTED] request for date of rank relief be granted and his date of rank be adjusted to 1 February 2000.

[REDACTED]

BCNR Liaison, Officer Promotions and
Enlisted Advancements Division