



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

HD:hd
Docket No: 07431-00
30 March 2001

L [REDACTED] USN

Dear Lieutenant [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. You requested that your date of rank be changed from 1 January 1995 to 1 October 1996, and that your failure of selection before the Fiscal Year 01 Line Lieutenant Commander Selection Board be removed.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 March 2001. 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 Navy Personnel Command (NPC) (PERS-86) E-mail dated 13 February 2001, the memorandum for the record dated 5 March 2001, and the NPC (PERS-85) advisory opinion dated 6 March 2001 with enclosure, copies of which are attached. The Board also considered your letters dated 7 and 27 February and 25 and 26 March 2001.

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 PERS-85 advisory opinion dated 6 March 2001 in finding that your date of rank should not be adjusted because you would not have rated an adjustment when you came on active duty, had you requested one. They found nothing in title 10, United States Code, section 741 precluding consideration, in determining whether to grant adjustment of date of rank, of how long an officer would be on active duty before facing a promotion board. They noted the PERS-86 E-mail dated 13 February 2001 did not state you would have been granted a date of rank adjustment to 1 October 1996, had you requested an adjustment; rather, it stated this is the best adjustment you might have been granted. Finally, they noted this E-mail stated that then Pers-26, now PERS-85, rather than PERS-86, handled the adjustment process when you came on active duty in 1996. Since they found insufficient basis to adjust your date of rank,

they had no grounds to remove your failure of selection for promotion. 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

Copy to:
CAPT [REDACTED] JAGC, USNR (RET)

Ruskin, Jonathian S

From: [redacted]
Sent: Tuesday, February 13, 2001 12:05 PM
To: [redacted]
Subject: RE: FORAC: [redacted]

> -----Original Message-----

> From: [redacted]
> Sent: Tuesday, February 13, 2001 10:48 AM
> To: [redacted]
> Subject: [redacted]
>
> Jon,
> Here is the info you and I were just discussing. With the DOR adjustment
> the member would have been a below zone officer for the FY-01 active board
> and would not have a failed to select posted to his record.

> -----Original Message-----

> From: [redacted]
> Sent: Tuesday, February 13, 2001 9:47 AM
> To: [redacted]
> Cc: [redacted]
> CDR: [redacted]
> S: [redacted]
>
> LT,
> [redacted] was promoted to LT on 1 January 1995 and recalled on 1 October
> 1996. Since he was in a non-drill status between the promotion and recall
> the best DOR adjustment would have been to give him a DOR equal to his
> recall (1 October 1996). Adjustment time is computed from date last
> released or promotion, which ever is greater.
>
> It should be noted that this office was not part of the adjustment process
> in 1996. Then Pers-26 (now Pers-85) handled this program.

> -----Original Message-----

> From: [redacted]
> Sent: Tuesday, February 13, 2001 8:43 AM
>
>
>
> Mik [redacted]
> Bro [redacted]
> Subject: [redacted]

> Sent: Tuesday, February 13, 2001 7:05 AM
 > To: [REDACTED]
 > Cc: [REDACTED]
 > William C. CDR; [REDACTED]
 > Subject: [REDACTED]

> Sir,
 > You are in the best position to answer this e-mail
 > based on our conversation yesterday.

> Very Respectfully,
 > [REDACTED]
 > PERS-8B Deputy Director, Personnel
 > Progression, Performance and Security
 > (904) [REDACTED] 415

> -----Original Message-----
 > From: [REDACTED]
 > Sent: [REDACTED]
 > To: [REDACTED]
 > Cc: [REDACTED]
 > Frank LT
 > Subject: [REDACTED]

> Sir,
 > need background ico sno...radm froman interest item.
 > sno is a 1xfos for 0-4...was out for 5 years before he got
 > back in...says he should have been advised that he could change his dor
 > via bcnr prior to coming back in and old dor has made him non-competitive
 > in selection boards...now in a time crunch to get the date changed prior
 > to next look.

> what are the rules regarding:
 > - what we advise prior to bringing them back in?
 > - do we advise them about being competitive after they have
 > been out?
 > - any way to change the rules that make sense for all?

> any specifics known about sno will help.

> vr, t.

> [REDACTED]
 > [REDACTED]
 > [REDACTED]

5 March 2001

MEMO FOR RECORD

Re: Case [REDACTED] SN, [REDACTED]

In light of [REDACTED] of 5 Mar 01, I contacted [REDACTED] PERS-85 today. He said their recent research of the case had disclosed that because of the lengthy period of active duty [REDACTED] would complete before coming up for promotion, he would have been granted no date of rank adjustment when he came on active duty, had he made a timely request for one. He agreed to put this information in writing as an addendum to the original advisory opinion PERS-85 had provided.

[REDACTED]

Head, Performance Section

MEMO FOR RECORD 5 MAR 01



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

5420
Pers 85
06 Mar 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED]

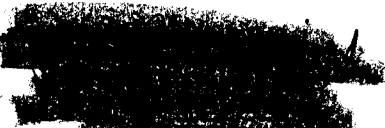
Ref: (a) SECNAVINST 1420.1A
(b) Section 741 of title 10, U.S. Code
(c) SECNAVINST 1427.2B

Encl: (1) Pers-85 Memorandum for BCNR of 28 Nov 00

1. Enclosure (1) is returned with the following addendum.
2. At the time [REDACTED] returned to active status in 1996, PERS-85 would not have granted an adjustment to his date of rank because the then-current Navy Promotion Plan forecast that LT [REDACTED] would have 4 ½ years (from October 1996 until April 2001) to demonstrate his promotability to the FY-02 Restricted Line Board. That was the board he would normally have first appeared before to be considered for Lieutenant Commander. It was unfortunate, but not foreseen in 1996, that Fleet Support Officers would later be moved from the Restricted Line to the Unrestricted Line (URL) community, thereby causing [REDACTED] and about 100 other FSO's to become initially board eligible on the FY-01 Active Line O-4 board. In this action though, he was not treated differently from his contemporaries. When these FSO's were brought into the URL community, he still had 3 ½ years worth of fitness reports to present to the FY-01 board, sufficient to present a clear and accurate portrayal of his career potential to the selection board membership. In fact, at the time of the FY-01 board [REDACTED]'s record contained five fitness reports from two tours of duty. On three of those reports, he was competitively ranked against his peers.
3. PERS-85 estimates that [REDACTED] had been granted a change in date of rank to 1 October 1996, the latest date which he could have been given, and if the Navy had not transferred the FSO community into the URL, he would presently be considered for promotion to O-4 on the FY-03 O-4 board as an in-zone eligible. He could be expected to have two additional fitness reports for that board than he had to present on the FY-01

PERS-85 MEMO DTD 6 MAR 01 W/ENCL

board, barring an unexpected detachment-of-reporting-senior report.



Division Director, Active Officer
Promotions, Appointments and Enlisted
Advancements Division



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

5420
Pers 85
28 Nov 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] UCN [REDACTED]

Ref: (a) SECNAVINST 1420.1A
(b) Section 741 of title 10, U.S. Code
(c) SECNAVINST 1427.2B

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of [REDACTED] request to change his date of rank for LT from 010195 to 010198 and remove his failure of selection to LCDR.
2. Per references (b) and (c), the Secretary of the Navy can change a date of rank to a later date effective when the officer is placed on the active-duty list if: 1) the officer has not been on continuous active duty since his original appointment as a reserve commissioned officer, or 2) is transferred from an inactive status to an active status and placed on the active-duty list. *This request must be made and approved prior to making the transition from the Reserve Active Status List to the Active Status List.* [REDACTED] was recalled to active duty in October 1996 - his request for date of rank adjustment needed to be done prior to his recall in 1996 and would have involved invalidating his reserve promotion to LT. Additionally, LT [REDACTED] misinterpreting NAVPERS 15559B, Section 9.5 which refers to deferring new accessions and recalled officers from promotion board consideration for one year, if immediately eligible for promotion upon return to active duty. This reference does not address adjusting date of rank upon return to active duty.
4. Recommend disapproval of [REDACTED] request. PERS-86 should be consulted for additional advisory opinions regarding [REDACTED] reserve service if needed.

[REDACTED]
BCNR Liaison, Officer Promotions
and Enlisted Advancements Division