



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

HD:hd
Docket No: 08250-98
6 December 2001

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

Subj: CAP [REDACTED] DC, USN [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 15 Oct 98 w/attachments
(2) BUMED ltr dtd 10 Feb 00
(3) Subject's counsel's ltr dtd 23 Oct 00 w/enclosures
(4) PERS-85 memos dtd 23 Apr 99, 6 Dec 00 and 27 Nov 01
(5) Memo for the Record dtd 3 Apr 01
(6) 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 his date of rank in the grade of lieutenant as 19 August 1976 vice 20 May 1972.

2. The Board, consisting of Messrs. Kastner, Schultz and Taylor, reviewed Petitioner's allegations of error and injustice on 6 December 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. In correspondence attached as enclosure (2), the Chief, Bureau of Medicine and Surgery (BUMED) recommended no relief. They stated that Petitioner's lieutenant date of rank was correctly established in accordance with the entry grade credit guidance in Secretary of the Navy Instruction 1421.5A.

c. Petitioner's counsel's rebuttal, enclosure (3), did not contend any error in the establishment of Petitioner's lieutenant date of rank, but argued that it is unjust because

Petitioner was never advised he would face statutory retirement in fiscal year 2003; and he actually received no benefit from the entry grade credit he was given. Counsel insisted that Petitioner's lieutenant date of rank should be corrected as requested, to allow him to complete 30 years of service in fiscal year 2007. He contended that with Petitioner's senior date of rank, he should have been immediately eligible for promotion board consideration on commissioning in 1980; however he was not considered until 1982, when the Fiscal Year (FY) 83 Dental Corps Lieutenant Commander Selection Board convened. Accordingly, counsel requested, in the event Petitioner's lieutenant date of rank is not adjusted as requested, that his record be corrected to reflect his promotions to lieutenant commander in 1975, vice 1983; commander in 1981, vice 1989; and captain in 1987, vice 1995.

d. Enclosure (4) comprises three opinions from PERS-85, the Navy Personnel Command (NPC) office with cognizance over officer promotions. The first, dated 23 April 1999, merely recommended that comment be obtained from BUMED which, as indicated in paragraph 3.b above, was done. In their second opinion, dated 6 December 2000, they commented to the effect that Petitioner's request to adjust his lieutenant date of rank has merit and warrants favorable action. They agreed with his counsel's contention that he received "no tangible benefit" from his entry grade credit. Their last opinion, dated 27 November 2001, stated that while there is no evidence to determine if Petitioner should have been considered by the FY 82 Dental Corps Lieutenant Commander Selection Board, the first promotion board to meet after he had entered active duty, his current lieutenant date of rank would have made him senior to the senior eligible for that board.

e. The memorandum for the record at enclosure (5) documents that in a phone conversation between Petitioner's counsel and a member of the Board's staff, counsel indicated he was in complete agreement with the second PERS-85 opinion, dated 6 December 2000.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the BUMED opinion at enclosure (2), and especially in light of the contents of the PERS-85 opinions dated 6 December 2000 and 27 November 2001 at 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 in the grade of lieutenant as 19 August 1976, vice 20 May 1972.

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
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
W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
2300 E STREET NW
WASHINGTON DC 20372-5300

IN REPLY REFER TO

1120
Ser 522/00-5931
10 Feb 00

From: Chief, Bureau of Medicine and Surgery
To: Board for Correction of Naval Records

Subj: ADVISORY OPINIONS ICO CA [REDACTED]

Ref: (a) SECNAVINST 1421.5A

Encl: (1) BCNR Application IC [REDACTED]

1. Enclosure (1) is returned recommending no action. Captain [REDACTED] Lieutenant date of rank (DOR), 20 May 1979, is correct in accordance with reference (a).

2. Per reference (a), in effect at the time of his accession, Captain [REDACTED] received twelve (12) years of entry grade credit - (4) years for his initial DDS and eight (8) years for his civilian dentistry experience. Reference (a) did not impose a maximum number of years credited for civilian experience.

3. Your point of contact is [REDACTED] NC, USN, who may be reached at [REDACTED] or [REDACTED]

[REDACTED]

By direction

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶ 1

To	H. Deramona	From	CAR Cohn
Dept./Agency	BCNR	Phone #	762-3398
Fax #	614-9857	Fax #	

NSN 7540-01-317-7368

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GENERAL SERVICES ADMINISTRATION



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

5420
Ser 85/063
23 Apr 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: CAPT [REDACTED], USN, [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned. CAPT [REDACTED] date of rank and lineal number as a Lieutenant are reflected by the established permanent grade date provided in his Officer Appointment Acceptance and Oath of Office.
2. Recommend redirecting member's request to BUMED for proper evaluation of the established permanent grade date.

[REDACTED]

BCNR Liaison, Officer Promotions and Enlisted Advancements Division



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

8250-98

5420
PERS-85
6 Dec 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

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

Subj: CAPT [REDACTED], DC, USN [REDACTED]

Ref: (a) SECNAVINST 1421.5A (cancelled)

Encl: (1) BCNR File no: 08250-98

1. Enclosure (1) is returned, recommending approval [REDACTED] request for date of rank adjustment of LT to 19 August 1976.

2. [REDACTED] entered the Navy in November 1980 as a LT with 12 years time in grade according to reference (a). His LT date of rank was correctly determined based on the guidance in effect at the time, SECNAVINST 1421.5A, to be 20 May 1972. [REDACTED] was selected to LCDR on the FY-83 Active [REDACTED] Corps Promotion Selection Board and promoted on 1 Jan 83. The Dental Corps promotion flow point to LCDR in 1980 was 9 years - [REDACTED] in effect did not pick up LCDR until the 14-year mark. Additionally, if his LT date of rank was 20 May 1972 for the FY-83 LCDR promotion board, it would be expected that he should have promoted at the beginning of the fiscal year, ahead of most of his peers. Instead he had a 1 January 1983 date of rank, vice 1 October 82. It is apparent that [REDACTED] received no tangible benefit from being given 12 years of constructive credit and his career has progressed consistent with 8 years of constructive credit. A review of Lieutenant dates of ranks for Dental Corps Officers close to [REDACTED] in precedence order reveal the majority with a 1976 or later date of rank.

3. Recommend BCNR favorably consider [REDACTED] request for a Lieutenant date of rank change to 19 August 1976. No further date of rank changes would be necessary as [REDACTED] progressed as a due course officer, consistent with eight years of constructive service credit.

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



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

5420
PERS-85
27 Nov 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

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

Subj: ADDENDUM TO ADVISORY OPINION ICO CAPT [REDACTED]
[REDACTED]

Ref: (a) SECNAVINST 1421.5A (cancelled)

Encl: (1) BCNR File no: 08250-98

1. A review of the record of proceedings from the FY-83 Active Dental Corps Lieutenant Commander Selection Board shows that the [REDACTED] went before that board in an above zone not previously considered status or AZNPC. This status reflects that [REDACTED] was senior to the senior eligible officer in zone before the board but had not previously been considered by a selection board.

2. Additionally, the zone message, ALNAV 145/81, outlined the zone for the FY-83 LCDR Dental Corps board as senior in zone with a date of rank of 3 Dec 77 and the junior in zone with a date of rank of 27 May 78. [REDACTED] had a LT date of rank of 20 May 1972, thus making him significantly senior to the senior eligible before this board. There is no evidence to determine if [REDACTED] should have been put before the FY-82 LCDR Dental Corps board as his name is not contained in the FY-82 Active Dental Corps Lieutenant Commander Record of Proceedings. However, his current date of rank to LT would have made him senior to the senior eligible for that board as well.

3. This information is submitted for BCNR's consideration of CAPT [REDACTED] request for a Lieutenant date of rank change to 19 August 1976.

[REDACTED]

BCNR Liaison, Officer Promotions and Enlisted Advancements Division

HD:hd
Docket No. 08250-98
3 April 2001

MEMORANDUM FOR THE RECORD

Subj: CAPT. [REDACTED] USN [REDACTED]

1. This memorandum for the record is to document a phone conversation between Petitioner's counsel (M [REDACTED]) and this staff member [REDACTED]

2. I indicated to the counsel that we had been waiting on a reply to the last advisory opinion from Pers-85, who recommended approval of Petitioner's request to correct his date of rank in the grade of lieutenant from 20 May 1972 to 19 August 1976.

3. Counsel indicated that they were in complete agreement with the advisory opinion and that the case could proceed before the Board.

[REDACTED]