



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

BJG
Docket No: 8299-00
17 October 2001

MR [REDACTED]

Dear [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 correction of your record to show your voluntary resignation from the Naval Reserve on 30 June 1991, rather than involuntary discharge on 31 December 1994 by reason of two failures of selection to lieutenant commander. You also requested removal of your failures by the Fiscal Year 1994 and 1995 Reserve Line Lieutenant Commander Selection Boards. Finally, you requested that your inactive duty training orders dated 20 March 1991 be removed or modified to show your transfer to the Individual Ready Reserve (IRR) was voluntary, rather than based on unsatisfactory drill attendance.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 October 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 advisory opinions furnished by the Navy Personnel Command dated 2 April and 19 June 2001, copies of which are attached. They also considered your rebuttal letter dated 7 May 2001, your facsimile transmission dated 14 May 2001 with enclosure, your rebuttal letter dated 20 September 2001 with enclosure, and your rebuttal letter dated 10 October 2001 with enclosure.

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.

The Board found your request to show you voluntarily resigned should be denied. In this regard, they found that no resignations were being accepted at the pertinent time; that the

Navy was under no obligation to accept your request for resignation; and that you received no written acknowledgement that your resignation request had ever been accepted.

The Board further found that the orders dated 20 March 1991 should not be removed or corrected. The evidence you provided, including the letter of 13 November 2000 from your former commanding officer (CO), did not persuade them that your drill attendance was actually satisfactory. In this regard, they noted the CO's letter does not state your attendance was satisfactory; rather, it says he did not terminate you for inability to maintain satisfactory attendance. They found it was within the authority of the CO, Naval Air Station, New Orleans, Louisiana, to cite unsatisfactory drill attendance as the reason for your transfer to the IRR.

Since the Board found insufficient basis to make the other record corrections you requested, they had no grounds to strike your failures of selection to lieutenant commander or set aside your involuntary discharge by reason of those failures.

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

Enclosures



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-911
2 Apr 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO
FORMER ██████████ USNR, ██████████

Ref: (a) BCNR memo 5420 PERS-OOZCB of 8 Mar 01
(b) SECNAVINST 1920.6A
(c) BUPERS ltr 1920 PERS-911 of 8 Sep 94

Encl: (1) BCNR File No. 08299-00

1. Per reference (a), enclosure (1) is returned with the recommendation that former ██████████ petition be denied.
2. Former ██████████ was commissioned an Air Force officer in 1982 and served on active duty for four years, three months, and two days of active duty before becoming a Naval Reserve officer on 14 January 1987. He then served on active duty in the Navy for three years before being released to the Naval Reserve in January 1990. He immediately began drilling in a Naval Reserve unit but stopped actively participating after October 1990, which was only three months after the advent of mobilization for Operation Desert Shield. In March of 1991, he was transferred from his drilling unit to the Individual Ready Reserve (IRR) because he failed to maintain satisfactory drill attendance. He did not actively participate in the Naval Reserve Program while assigned to the IRR. As a member of the IRR former ██████████ was considered for promotion by the appropriate selection boards and he twice failed of selection for promotion. Accordingly, he was discharged from the Naval Reserve effective 31 December 1994.
3. Former ██████████ states that he submitted paperwork to resign his commission in the spring of 1991 but we have no record of this action. Even if we had received his resignation request at that time, we could not have processed it because all resignations and retirements were frozen due to Operation Desert

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO
FORMER [REDACTED]

Storm. We note that former [REDACTED] did not follow up on his alleged resignation request. Furthermore, we notified him in writing of his attrition and discharge in 1994 and he did not bring this matter up at that time.

4. All members of the Ready Reserve, including IRR members, are required by law to be considered by promotion selection boards, whether or not they are actively participating. Former LT [REDACTED] is a member of the Ready Reserve since his release from active duty in 1990 and was eligible for consideration by promotion selection boards. He was correctly considered by the FY-94 and FY-95 promotion boards and failed of selection on both occasions.

5. Per reference (b), a lieutenant who has at least twice failed of selection and has completed his eight-year military service obligation must transfer to the Retired Reserve, if eligible, or be discharged. Per reference (c) former [REDACTED] was notified that he had become subject to the attrition provisions of reference (b) and because he had not earned 20 years of qualifying service his honorable discharge from the Naval Reserve was required by 31 December 1994. There is no provision of law or policy to waive this requirement.

6. We find no evidence of error or injustice in this case. Per 10 USC 14505 and 14513, lieutenants who twice fail of selection for promotion are separated from the Naval Reserve by either retirement or discharge. Because he was not eligible for retirement he was honorably discharged from the Naval Reserve. Accordingly, we recommend his petition be denied.

7. My point of contact [REDACTED] PERS-91B, at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Director, Naval Reserve Personnel
Administration Division



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

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5420
PERS-911
19 Jun 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO
FORMER [REDACTED]

Ref: (a) BCNR memo 5420 PERS-OOZCB of 30 May 01

Encl: (1) BCNR File No. 08299-00

1. Per reference (a), enclosure (1) is returned with the recommendation that former [REDACTED] request to remove involuntary transfer orders from his record be denied.

2. A review of former [REDACTED] record reveals that after his separation from active duty in January 1990, he joined a reserve unit and drilled in February, March, May through October and December of 1990. No other documentation, i.e. drill attendance records or drill pay statements could be found to substantiate any other drills through 11 March 1991. From 14 January 1990 to 13 January 1991, former [REDACTED] attended a total of 33 of 48 scheduled drills for a drill participation rate of 69%. Participation requirements at that time were a minimum of 90% drill attendance. Per DOD Directive 1215.13 and BUPERSINST 1001.39, former [REDACTED] was correctly identified as having unsatisfactory drill participation, which is documented in his orders of 20 March 1991. The fact that the member was below minimum standards when he requested transfer from his unit to the Individual Ready Reserve, does not negate Commanding Officer, Naval Air Station, New Orleans prerogative to cite unsatisfactory drill performance as the reason for transfer.

3. With regard to former [REDACTED] effort to resign his commission, we note his lack of good judgement in soliciting advice from an enlisted career counselor. Officers normally seek career advice from qualified personnel such as their commanding officer or other senior officers. Had he sought such counseling he would have been informed that:

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FORMER [REDACTED] USA [REDACTED]

a. No resignations were being accepted at that time due to a stop loss directive issued by DoD,

b. He would have to reapply after stop loss directive was cancelled if he still desired to resign his commission,

c. His request to resign implies no obligation on the part of the Navy to accept his resignation, and

d. Acceptance of any resignation request on behalf of the Secretary of the Navy would be acknowledged via official separation orders and an honorable discharge certificate.

4. It is important to note that these events occurred during a major mobilization. Not only were units being mobilized, but also many individuals were being recalled who possessed specific skills needed by the Fleet. Former [REDACTED] statement that it was evident that his unit was not going to be activated is irrelevant. As a Ready Reservist at that time he was subject to and available to fill any requirement that may have arose. It was during this time that he stopped active participation with his unit, became unsatisfactory in drill participation, was transferred from the Selected Reserve to the Individual Ready Reserve, and asked to resign his commission.

5. In reviewing former [REDACTED] case we continue to find no evidence of error or injustice. His official record accurately reflects the appropriate actions, which occurred during that period of time. Accordingly, we continue to recommend his petition to alter his official record by removing the involuntary transfer orders be denied.

6. My point of contact is [REDACTED] PERS-91B [REDACTED] or commerci [REDACTED]

[REDACTED]

Director, Naval Reserve Personnel Administration Division