



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

HD:hd  
Docket No: 00529-02  
6 June 2002

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

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

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

Encl: (1) DD Form 149 dtd 19 Jan 02 w/attachments  
(2) PERS-911 memo dtd 17 Apr 02  
(3) Subject's ltr dtd 13 May 02  
(4) 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 his naval record be corrected to show his resignation and discharge from the Naval Reserve on 20 November 1994. He also asked that the period from his resignation to his affiliation with the Selected Reserve component of the Naval Reserve in November 2000 (a period during which he was in the Army Reserve, then in the National Guard) be counted toward his retirement eligibility. By implication, he further requested removal of his failure of selection by the Fiscal Year (FY) 98 Naval Reserve Line Commander Selection Board, as well as any other failure of selection he may have sustained after the requested resignation date. Finally, he requested that his record be corrected to show he has been recommissioned as an officer in the Naval Reserve. The Board did not consider his request that the period from resignation to affiliation be counted toward retirement eligibility, as this is an Army Reserve/National Guard matter. They likewise did not consider his request for recommissioning, as this can be accomplished without Board action (by means of an inter-service transfer or, if he has had a break in service, by a direct reappointment).

2. The Board, consisting of Messrs. Dunne, Morgan and Swarens, reviewed Petitioner's allegations of error and injustice on 6 June 2002, 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. Although Petitioner refers to a "failure to select to the O-5 [commander] 2001 board," he actually was not considered by the FY 02 Selection Board. He was ineligible for consideration by the FY 99 through 01 Selection Boards, because he was in the Standby Reserve - Inactive when those promotion boards met; and he was ineligible for the FY 02 promotion board, because that board convened less than a year after his restoration to active status. He was considered by the FY 03 Selection Board, convened on 25 February 2002; however, the results of that promotion board have not been released.

c. In correspondence attached as enclosure (2), the Navy Personnel Command office having cognizance over the subject matter of Petitioner's case has commented to the effect that his request for resignation effective 20 November 1994 has merit and warrants corrective action. They further recommended that all Naval Reserve service after that date be expunged, including any failure of selection, transfer, or accumulation of commissioned service.

d. Enclosure (3) is Petitioner's response to the advisory opinion at enclosure (2). He states that the needs of the Navy and the error in his record "can best be met by entering [his] resignation into [his] record and Recommissioning [sic] [him] as an Officer [sic] in the Naval Reserve."

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (2), the Board finds an error warranting the following corrective action.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he resigned and was discharged from the Naval Reserve on 20 November 1994.

b. That his record be corrected further to show he has not been considered for promotion to commander (remove his failure of selection by the FY 98 Naval Reserve Line Commander Selection Board, and remove all record of his consideration by the FY 03 Selection Board, regardless of the results).

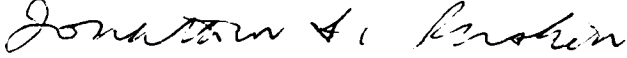
c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a

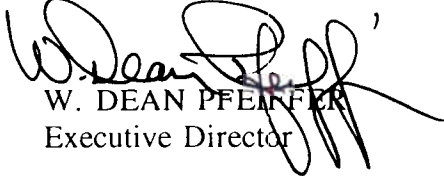
confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

5420  
PERS-911  
17 Apr 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
LCDR [REDACTED] R., USNR [REDACTED]

Ref: (a) BUPERINST 1001.39D  
(b) DD Form 368  
(c) Title 10 U.S.C. 10149

Encl: (1) BCNR memo 5420 PERS-OOZCB of 10 APR 02 w/encls

1. Enclosure (1) is forwarded with the following comments and recommendations concerning [REDACTED] request for his resignation from the Naval Reserve effective 20 November 1994, and credit towards retirement for time spent in the Army Reserve and Arkansas National Guard.

2. An examination of [REDACTED] official record and the information provided in enclosure (1), shows compounding errors occurring after he and the Army failed to report his joining the Army Reserve in 1994. Our review reveals that LCDR Briggs joined the Navy in 1982, was commissioned in 1983, separated from active duty and joined the Naval Reserve in 1990, and was promoted to LCDR in 1993. In November 1994, he enlisted in the Army Reserve without the Naval Reserve's knowledge. As a result, [REDACTED] never discharged from the Naval Reserve. He continued to compete for promotion and subsequently failed to select for O-5 by the fiscal year 1998 selection board. In addition, his record was later screened for participation in accordance with reference (c), and after failing to respond to official correspondence, he was transferred to Standby Reserve-Inactive status (USNR-S2) on 1 October 1997.

3. [REDACTED] remained in S-2 status until he visited a Naval Reserve Officer Programs Recruiter in the fall of 2000 and requested affiliation into the Naval Reserve. There is no indication that LCDR [REDACTED] informed the recruiter of his service in the Army Reserve and Arkansas National Guard at that time. Had he done so, we would have confirmed his status in another branch of the service, denied his affiliation, and closed out his record after issuing an honorable discharge effective 20 November 1994. Instead, because his record inaccurately reflected continuous Naval Reserve status, no new appointment was issued and he was approved for Selected Reserve assignment in November 2000.

8324-02

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
LCDR [REDACTED] USNR, [REDACTED]

4. Because the Naval Reserve was unaware of [REDACTED] Army Reserve and National Guard service, and because the Naval Reserve's subsequent actions regarding his transfer to S-2 and subsequent Naval Reserve affiliation were conducted in accordance with Navy policy, we believe that the Navy committed no error or injustice in this case. However, his situation must be corrected to accurately reflect both his Naval Reserve and subsequent Army Reserve/National Guard service. Therefore, we recommend the following:

a. We recommend approval of his request for resignation from the Naval Reserve, with an effective discharge date of 20 November 1994.

b. We recommend that all service in the Naval Reserve, after 20 November 1994, be expunged from his Naval records, including any failures of selection, transfers, and accumulation of years of commissioned service.

c. Because [REDACTED] had 12 years of qualifying service towards a non-regular retirement with the Naval Reserve prior to his enlistment in the Army Reserve and Arkansas National Guard, we recommend he contact those organizations to obtain discharge certificates and updated statements of service. He could then complete service requirements for retirement per 10 USC 12731 with the National Guard, or if desired and qualified, request an inter-service transfer. If there is a break in service, he can request a reappointment back into the Naval Reserve.

d. We recommend that his request for retirement credit after 20 November 1994 not be acted on by BCNR because this is an Army Reserve/National Guard issue.

5. Because [REDACTED] oneously affiliated in the Selected Reserve in November 2000, he will be prohibited from further participation in the Naval Reserve until this situation is adjudicated by BCNR.

6. Point of contact in this matter is [REDACTED] or C [REDACTED]

[REDACTED]

Captain U.S. Naval Reserve  
Director, Naval Reserve Personnel  
Administration Division