



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

BJG
Docket No: 2133-02
25 August 2003

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

Subj: EX-MT [REDACTED] USM [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 18 Jan 02 w/attachments
(2) Ltr of Instruction No. 454 dtd 16 Jun 43
(3) HQMC MMPR memo dtd 12 Apr 02
(4) HQMC MMPR memo dtd 15 Jul 02
(5) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that his naval record be corrected to show he was granted temporary appointment as a commissioned warrant officer (CWO2) while he was on active duty, and that this appointment remained in effect until his relief from active duty on 4 January 1946.

2. The Board, consisting of Messrs. Bishop, Grover and Haney, reviewed Petitioner's allegations of error and injustice on 1 May 2003, 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 it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. On 16 August 1945, when Petitioner was on active duty as a temporary warrant officer (W1) in the Marine Corps Reserve, Promotion Letter Number 13 was issued, authorizing his temporary appointment to commissioned warrant officer effective 14 August 1945, to remain in effect while he was on active duty. This appointment was

issued subject to the conditions outlined in Letter of Instruction Number 454, dated 16 June 1943 (enclosure (2)), which required verification of physical qualifications. As he was sick in the hospital when his command received Promotion Letter Number 13, there was no authority for his appointment as a temporary commissioned warrant officer. By orders of 5 October 1945, he was authorized 17 days of terminal leave. By letter of 9 October 1945 (Tab A to enclosure (1)), the Secretary of the Navy (SECNAV) advised Petitioner that his temporary appointment as a warrant officer was terminated, effective on receipt of the letter, "in view of the fact that [he was] to be relieved from active duty." By orders of 10 October 1945 (Tab B to enclosure (1)), citing the SECNAV letter of 9 October 1945, the Commandant of the Marine Corps directed the termination of his temporary appointment as a warrant officer on his relief from active duty. By letter of 11 October 1945 (Tab C to enclosure (1)), his commanding officer advised Headquarters Marine Corps (HQMC) that Petitioner was then physically qualified for a temporary appointment as a commissioned warrant officer, and he requested authority for such appointment. Attached to this letter was a Form Y, Report of Physical Examination, dated 29 September 1945, stating that Petitioner was "found to be physically qualified to perform his duties...for promotion to CWO (Temp) [Temporary]." According to the HQMC letter of 21 March 1947 (Tab D to enclosure (1)), this letter was received on 29 October 1945. No action was taken on the request, as it was assumed Petitioner had been relieved from active duty already, or would be before his appointment could be effected. However, he was not actually relieved from active duty, and his appointment as a temporary warrant officer was not terminated until 4 January 1946 (Tab E to enclosure (1)). He was transferred to the inactive Marine Corps Reserve in the grade of master technical sergeant. In his letter of 1 March 1946 (Tab F to enclosure (1)) requesting separation from the Marine Corps Reserve, Petitioner said that when no reply to the command's letter was received, "letters of inquiry to Headquarters on this matter were unanswered." Also in this letter he said that in light of the circumstances concerning his temporary appointment as a commissioned warrant officer, he felt the Marine Corps had "let [him] down," and "therefore [he did] not want to be any part of the organization any longer." By letter dated 11 March 1946 (Tab G to enclosure (1)), CMC offered Petitioner a permanent appointment as a warrant officer in the Marine Corps Reserve, but in an undated letter (Tab H to enclosure (1)), he declined this appointment, reiterating his desire to be separated. He was discharged from the Marine Corps Reserve on 25 April 1946. By letter of 21 March 1947 (Tab D to enclosure (1)), HQMC replied to an inquiry on behalf of Petitioner from his United States Senator by stating "Since [Petitioner] was not relieved from active duty at the expected time it is regretted that he did not communicate further with this Headquarters relative to his promotion."

d. In correspondence attached as enclosure (3), the HQMC Officer Promotion Section (MMPR), the office with cognizance over the subject matter of this case, misstated Petitioner's request by saying that he requested the warrant officer appointment "in the reserves that he was offered in 1946." They said "Because [he] declined the appointment to warrant officer in the reserves and was discharged, and the program was subsequently closed, there is no authority to effect the appointment to warrant officer."

e. In correspondence at enclosure (4), the HQMC MMPR again misstated Petitioner's request, this time saying he sought correction of his record to show his appointment to warrant officer was not terminated by reason of physical disability, but continued in effect from 14 August 1945 until he left active duty. They concluded that his temporary appointment as a warrant officer was not terminated because of his physical condition, but was terminated on 10 October 1945, pursuant to the orders at Tab B to enclosure (1), because he separated from active service. In fact, his temporary appointment as a warrant officer was not terminated until 4 January 1946, well after 29 October 1945, the date on which HQMC received the command's letter advising that Petitioner was qualified for appointment as a temporary commissioned warrant officer.

CONCLUSION:

Upon review and consideration of all the evidence of record, and despite the contents of enclosures (3) and (4), the Board finds the existence of an error and injustice warranting correction of Petitioner's naval record to show he was appointed a temporary commissioned warrant officer effective 29 October 1945, and that this appointment remained in effect until his relief from active duty on 4 January 1946.

The Board finds that HQMC should have acted on the command's letter of 11 October 1945, which they received on 29 October 1945, to effect Petitioner's appointment. The Board further finds it was not incumbent on him or his command to follow up on this letter to ensure appropriate action.

In view of the above, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected, where appropriate, to show he was temporarily appointed to commissioned warrant officer (CWO2) effective 29 October 1945, and that this appointment remained in effect until his relief from active duty on 4 January 1946.

b. 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. 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. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER
Executive Director

Reviewed and approved:

Robert D. Zsalm
9-8-03

1412/2
MMPR
APR 12 2002

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER [REDACTED]
[REDACTED] (402300)

- Ref: (a) MMER Route Sheet of 29 Mar 02
- (b) CMC ltr of 11 Mar 46
- (c) [REDACTED] ltr of 1 Mar 46
- (d) [REDACTED] ltr of 24 Apr 46
- (e) CMC ltr of 12 Dec 47

1. Reference (a) requested an advisory opinion in the case of [REDACTED]. [REDACTED] is requesting a promotion to warrant officer in the reserves that he was offered in 1946.

2. The following facts are germane:

a. Reference (b) afforded the opportunity for [REDACTED] to be a warrant officer in the Marine Corps Reserves.

b. [REDACTED] signed references (c) and (d) declining the appointment to the rank of warrant officer and requested to be separated.

c. In response to a previous letter from [REDACTED] reference (e) informed [REDACTED] that the transfer program of the Marine Corps had been closed to all former officers in his category, and applications for transfer to the regular Marine Corps in warrant officer status were no longer being considered.

3. Because [REDACTED] declined the appointment to warrant officer in the reserves and was discharged, and the program was subsequently closed, there is no authority to effect the appointment to warrant officer.

4. The point of contact in this matter is Chief Warrant Officer 4 Boggs at [REDACTED]

[REDACTED]

Head, Officer Promotion Section

1412/2
MMPR
JUL 15 2002

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER MEMBER [REDACTED]
[REDACTED]

Ref: (a) BNCR memo of 6 Jun 02
(b) HQMC ltr dated 10 Oct 45

1. Reference (a) requested an advisory opinion in the case of [REDACTED] is requesting MMPR show that his appointment to warrant officer (W1) was not terminated due to his physical disability, but continued in effect from 14 Aug 45 until he left active duty.

2. The following facts are germane:

a. [REDACTED] s was already serving in the grade of temporary warrant officer (W1) at the time of his being offered an appointment to the grade of commissioned warrant officer (CW02), on 14 August 1945 to rank from 31 July 1945. Promotion letter number 13 authorized this promotion. However, promotion letter number 13 was never found, despite every reasonable attempt to locate it. Only a memorandum dated 21 September 1945, referencing promotion letter 13 was found in [REDACTED] record. Also, due to the fact that [REDACTED] was found physically unqualified at that time, the authorization for promotion to commissioned warrant officer was never effected.

b. Per reference (b) M [REDACTED] temporary appointment as a warrant officer was terminated on 10 October 1945, due to the fact that he separated from active service.

3. Based on the above facts, [REDACTED] temporary appointment as a warrant officer was not terminated due to his physical condition, which found him unqualified for promotion to commissioned warrant officer.

4. The point of contact in this matter is [REDACTED]
Si [REDACTED] (702) 701-0705

[REDACTED]

Head, Officer Promotion Section