



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

HD:hd
Docket No: 04219-01
27 February 2002

CDI [REDACTED] USNR
[REDACTED]
[REDACTED]

Dear Commander [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 naval record to show you were given a chance to accept a Regular Navy commission before your release from active duty on 6 June 1995.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 February 2002. 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 opinion furnished by the Navy Personnel Command dated 11 July 2001 with enclosure, a copy of which is attached. The Board also considered your letter dated 27 August 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 comments contained in the advisory opinion. They noted that both the current version of the Naval Military Personnel Manual and the version in effect at the time (article 1020120) stated that procedures "requesting" [emphasis added] transfer to the Regular Navy without board action are contained in Secretary of the Navy Instruction 1210.5A." 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



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
Ser 811C/1U185
11 Jul 01

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

Via: PERS/BCN Coordinator (PERS-00ZCB)

Subj: CDP [REDACTED] MSC [REDACTED]

Ref: (a) MILPERSMAN 1131-020
(b) SECNAVINST 1210.5A
(c) PHONCON NPC (PERS-811) [REDACTED] of
22 Jun 01

Encl: (1) Memo from [REDACTED] dated 25 Jun 01

1. References (a) and (b) outline policy and procedures for appointment in the Regular Navy of Reserve and Temporary Officers. Both references require members to submit an application in order to be considered for transfer or redesignation.

2. An appointment without board action can only be tendered after:

- (a) The member submits a request,
- (b) A Regular Navy vacancy is available and
- (c) Senate confirmation occurs.

[REDACTED] confirmed in reference (c) that he did not submit an application for transfer to the Regular Navy during his General Recall (92JUN24 - 95JUN06). Because of this oversight, there was no error or injustice to the member as implied in the BCNR application.

3. Enclosure (1) further explains [REDACTED]'s interpretation of applicable references however, it is unfortunate that he did not request transfer to the Regular Navy while in an eligible status.

4. If you have any question regarding this matter, I can be contacted at [REDACTED] (501) [REDACTED].

[REDACTED]

Head, In-Service Procurement Branch

Date: 25 June 25, 2001

From: [REDACTED], MSC, USNR

CMH

To: [REDACTED] (PERS 811)

Subj: BCNR docket number 4219-01

Ref: (a) MILPERSMAN 1131-020
(b) SECNAVINST 1210.5A

1. Per our phoncon of Friday 22 June, I am faxing to you references (a) and (b). I have circled all of the appropriate sections or paragraphs of both these references that I believe are relevant to my position as it applied in 1994 while serving under three year general recall orders (active duty list) at Naval Hospital [REDACTED]
2. Paragraph ⁵ of the Policy section of reference (a) indicates that "All other Reserve Officers on the active duty list selected for lieutenant commander ... who have completed at least 3 years of active commissioned service will be offered Regular appointments without board action." All prior paragraphs of reference (a) indicate Reserve Officers in various staff corps "may apply... without board action". At issue here is the definition and contextual meaning of reference (a) for both "without board action" and the specific absence of "may apply" in paragraph 4 as it applied in 1994. (above italics are mine).
3. On page 3 (section 9a) of reference (b), the approval of transfers from Reserves to Regular Navy states that "Qualified Reserve Officers in the following categories may, with the approval of the CNO, be transferred from the Naval Reserve into the Regular Navy without the board action referred to above...". On page 4 (section 9a3), it states that "... such officers must accept a Regular appointment, if tendered, concurrent with promotion or be released from active duty ... on expiration of active duty agreement." (above italics are mine).
4. I was never tendered a Regular Officer appointment concurrent with my promotion in 1994. At that time, I had met all conditions of references (a) and (b) to be offered a Regular appointment without board action: I was a Reserve Officer on the active duty list with at least 3 years of active commissioned service when I was selected for lieutenant commander in 1994. My status in 1994 is verified by the attachments previously sent to BCNR (e.g., DD214, active duty promotion board results, etc.).
5. With approximately six months remaining on my general recall orders (sometime in late 1994) I was informed that, as a recalled reservist, I had to initiate a request for release from active duty; the release date from this general recall was effective June 1995 at end of three year recall.
6. If there are any questions, I can be reached at [REDACTED] email at [REDACTED]

8/16 CORRECTION

RESEND OF FAX COVER MEMO

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3 PAGES CIRCLED PARAGRAPHS/SECTIONS

ENCLOSURE (1)

All other Reserve officers on the active duty list selected for lieutenant commander or above by an active duty promotion board, and who have completed at least 3 years of active commissioned service will be offered Regular appointments without board action. For YG97 and later Reserve Officers, this regular commission will be received automatically at the time of their qualifying promotion to lieutenant commander or above.

Procedures for requesting transfer to the Regular Navy without board action are contained in SECNAVINST 1210.5A.

**Eligibility
Requirements**

Regular and temporary officers are eligible for permanent appointment in the Regular Navy who:

- Are citizens of the United States.
- Are of such an age that their active commissioned service, including prior active commissioned service, shall equal not less than 20 years upon attaining the age of 55 years. Officers of the Medical, Dental, Chaplain, and Nurse Corps and Allied Science Officers of the Medical Service Corps must be able to complete 20 years active commissioned service prior to attaining the age of 60 years. Limited duty officers (LDOs) and chief warrant officers (CWOs) must be able to complete 20 years total active service prior to attaining the age of 62 years.
- Meet the following minimum service requirements:

REFERENCE (b)

SECNAVINST 1210.5A CH-2
18 October 1991

(6) Must meet such additional criteria as may be prescribed by the Chief of Naval Operations.

i. Officers applying for transfer or redesignation to TAR status must meet the eligibility requirements of subparagraphs 6a(1), (3) and (4) and be qualified for assignment to sea duty.

7. Inactive-Duty Officers

a. Reserve officers and Reserve LDOs not on active duty are not eligible under this instruction for transfer into the Regular Navy.

(1) Reserve officers who are not on the active-duty list may not request transfer into the Regular Navy until they have been recalled from the Reserve component to the active-duty list and have served on active duty for at least 12 months, excluding all periods of duty under instruction in excess of 30 days, and have otherwise satisfied the criteria of subparagraph 6a.

(2) Reserve LDOs who are not on the active-duty list may not request transfer into the Regular Navy and appointment as a Regular temporary LDO until they have been recalled from the Reserve component to the active-duty list and have served on active duty for at least 12 months, excluding all periods of duty under instruction in excess of 30 days, and have otherwise satisfied the eligibility criteria in subparagraph 6e.

b. Section 1331 of reference (1) provides for retired pay benefits upon application for any member or former member of a Reserve component who has completed at least 20 years of qualifying service. The last 8 years of qualifying service must be performed as a member of a Reserve component.

8. Training and Administration of Reserves (TAR) Officers. Transfers may be made between the Regular Navy and the TAR program subject to the following limitations:

a. Transfers from the TAR program must not reduce TAR strength in the losing competitive category or unrestricted line designator below its authorized TAR strength.

b. Transfer from the Regular Navy must not reduce strength in the losing competitive category or unrestricted line designator below its authorized strength, increase promotion opportunity or reduce promotion flow point in the losing competitive category, or prevent attainment of full Regular authorized strength in the career grades in the losing competitive category.

c. Applicants for such transfers must meet the eligibility requirements in subparagraph 6a or 6i as applicable.

7. Approval of Transfers and Redesignations. Except as provided for below, all transfers and redesignations of officers under this instruction shall be made following the approved reports of Transfer/Redesignation Boards appointed by the Chief of Naval Operations (CNO).

a. Qualified Reserve officers in the following categories may, with the approval of the CNO, be transferred from the Naval Reserve into the Regular Navy without the board action referred to above, provided Regular officer authorized strengths within the given competitive category permit. Qualified Reserve officers in these categories will be appointed to meet Regular force and the career force objectives outlined in paragraph 4.

(1) Distinguished Naval Graduates (DNG). Such officers have the option of accepting a Regular appointment when tendered, or retaining their Reserve appointment.

(2) Reserve officers on the active-duty list in the Medical, Dental and Judge Advocate General's Corps who are selected for and promoted to the grade of commander or above per the recommendations of an active-duty promotion board convened after the effective date of this instruction and who have completed at least 3 years of active commissioned service

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18 October 1991

prior to selection for promotion. Such officers must accept a Regular appointment, if tendered, concurrent with promotion or be released from active duty on completion of any obligated service incurred or on expiration of any active-duty agreement.

(3) All other Reserve officers on the active-duty list who are selected for and promoted to the grade of lieutenant commander or above per the recommendations of an active-duty promotion board convened after 15 September 1981 and who have completed at least 3 years of active commissioned service prior to selection for promotion. Such officers must accept a Regular appointment, if tendered, concurrent with promotion or be released from active duty on completion of any obligated service incurred or on expiration of any active-duty agreement. Chaplain Corps officers who cannot obtain ecclesiastical endorsement for Regular appointment may be retained on the active-duty list to maintain authorized strength in grade when strength cannot be maintained with Regular officers or when necessary to maintain religious faith group balance.

(4) Reserve officers in subparagraphs 9a(2) and (3) with less than 3 years of active commissioned service prior to selection for promotion, upon completion of 3 years of active commissioned service. Such officers must accept a Regular appointment, if tendered, or be released from active duty on completion of any obligated service incurred or on expiration of any active-duty agreement.

(5) Reserve officers who successfully complete the Law Education Program (LEP) under reference (j) and are admitted to the practice of law. Such officers must, under signed agreement, accept a Regular appointment when tendered.

(6) Nuclear Propulsion Officer Candidate (NLPOC) source officers who successfully complete the nuclear power training pipeline. Such officers must, under signed agreement, accept a Regular appointment when tendered.

(7) Other officers as authorized by the Secretary of the Navy, considering any comments and recommendations of the Chief of Naval Personnel.

b. The Chief of Naval Personnel may take action to redesignate or transfer qualified Regular or Reserve officers in the following categories without Transfer/Redesignation Board action:

(1) Officers redesignated as a result of qualification within an unrestricted line warfare designator.

(2) Student officers redesignated as a result of completing professional requirements for appointment in the Medical, Dental, Judge Advocate General's, or Chaplain Corps.

(3) Officers redesignated as a result of administrative or medical board action requiring revocation or restoration of status.

(4) Officers to be redesignated following disenrollment from initial warfare training programs.

(5) Officers redesignated as trainees in an unrestricted line warfare designator.

10. **Application.** Officers may apply for transfer or redesignation for which they qualify under this instruction, following application procedures established by the Chief of Naval Personnel. Applicants may request consideration for no more than two designators within the same or different competitive categories.

11. Transfer/Redesignation Boards

a. **Board Composition.** Boards shall be convened by the CNO and shall consist of at least five members, military or civilian. Except for boards considering officers for transfer and redesignation into the TAR program, a majority of members will be officers of the Regular Navy serving in the grade of lieutenant commander or above. Boards considering the transfer and redesignation of officers into the TAR program will be comprised of a majority of TAR officers