



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

*Handwritten signature*

HD:hd  
Docket No: 05388-02  
7 November 2002

LCPL [REDACTED] USNR  
[REDACTED]  
[REDACTED]

Dear Commande [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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 November 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 opinions furnished by the Navy Personnel Command dated 12 August and 1 October 2002, copies of which are attached. The Board also considered your letter dated 28 October 2002 with enclosures.

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 advisory opinions.

The Board found it would not have been appropriate for cognizant naval authorities to bring up the possibility of transferring you to S2 (Standby Reserve - Inactive) status when you were transferred to S1 (Standby-Reserve Active) status on 6 August 1996, as you had expressed no interest in transfer to S2 status; these authorities had no reason to believe you might be a proper candidate for such transfer, as they had no basis to expect you could not continue to participate actively in the Naval Reserve; and they had no reason to expect you would have been interested in such transfer, as it would have made you ineligible to earn reserve retirement point credit. The Board noted you were later offered transfer to S2, but chose to remain in an active status. You do not specify the person or persons at "MILPERS" who, you assert, told you that you should have been in S2 status. While your failure to earn 27 points in your first year with the FBI could have been used as a basis to transfer you to S2 status, the law did not specify when your removal from active status was to be effected; and

for reasons indicated above, it would not have been clearly in your best interest to transfer you to S2 status. Finally, the Chief of Naval Personnel letter of 6 August 1996 specifically stated you would be eligible to be considered for promotion, so you should not have accepted the erroneous advice you say a Miami recruiter gave you, to the effect that your inactivity would make you ineligible for promotion consideration.

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  
 12 Aug 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
 NAVAL RECORDS

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO  
 LCDR [REDACTED] USNR [REDACTED]

Ref: (a) BCNR memo 5420 PERS-00ZCB of 29 Jul 02  
 (b) DoD Directive 1200.7  
 (c) BUPERSINST 1001.39C  
 (d) CHNAVPERS ltr 1321 PERS-911 of 6 Aug 96

Encl: (1) BCNR File 05388-02

1. Per reference (a), enclosure (1) is returned with the following comments and recommendations concerning LCDR [REDACTED] request that his failures of selection for promotion to Commander be removed and his record be changed to show that he was transferred to Standby Reserve-Inactive (USNR-S2) vice Standby Reserve-Active (USNR-S1) status on 6 August 1996 to present.

2. A review of LCDR [REDACTED] record reveals that he was commissioned as a Naval Reserve officer in September 1982. He served on active duty from April 1982 until January 1994 when he was separated from active duty and began drilling with the Naval Reserve. He drilled in the Naval Reserve until June 1996, at which time he ceased all participation in the program. LCDR [REDACTED] has earned 14 years, eight months, and 18 days of qualifying service towards retirement.

3. In July 1996, the Federal Bureau of Investigation (FBI) notified us that LCDR [REDACTED] was considered a Key Federal Employee. Accordingly, per references (b) and (c) we transferred him to Standby Reserve-Active (USNR-S1) status on 6 August 1996. Per reference (d), we notified the FBI and LCDR [REDACTED] of his transfer to Standby Reserve-Active (USNR-S1) status, participation requirements for remaining in that status, and his eligibility for consideration by promotion selection boards. We also included a telephone number to contact us if he had questions about the transfer or his Naval Reserve status.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO  
LCDR [REDACTED], USNR [REDACTED]

4. It is important to note that in 1996, [REDACTED] had earned almost 15 years of qualifying service towards a Naval Reserve retirement. Placement in USNR-S1 status was the only option available that would allow the member an opportunity to continue completing the additional years of service needed to qualify for retired pay at age 60. Retirement points could have been earned via non-pay assignment or correspondence course completion. For reasons unknown, the member did not take advantage of either of these opportunities.

5. On three occasions (December 1998, August 2000 and September 2001), we notified [REDACTED] that he was not meeting the minimum participation requirements and that we would transfer him to Standby Reserve-Inactive (USNR-S2) status if he did not respond to the correspondence. On those three occasions, we offered him the options of remaining in an active status (USNR-S1), transferring to Standby Reserve-Inactive (USNR-S2) status, or resigning his commission. We also provided telephone numbers for him to contact us to discuss his status. He responded to the first two notifications indicating that he desired to remain in an active status. Accordingly, we kept him in the Standby Reserve-Active (USNR-S1). We did not receive a response to our 2001 correspondence and therefore, transferred him to the Standby Reserve-Inactive (USNR-S2) on 1 November 2001.

6. We strongly recommend that LCDR [REDACTED]'s petition be denied. In reviewing this case, we found no error or injustice on the part of the Navy. We properly transferred [REDACTED] to Standby Reserve-Active (USNR-S1) when he was identified as a Key Federal Employee. USNR-S1 status provided him with the opportunity to complete requirements for a Naval Reserve retirement. Regrettably, LCDR [REDACTED] did not maintain minimum participation standards in the USNR S-1. We followed-up with appropriate written counseling and took transfer action in accordance with applicable policies and regulations. The next step in the process is for [REDACTED]'s record to be reviewed by a Mobilization Disposition Board in January 2003. Because he has twice failed of selection to Commander and is ineligible for further active reserve service, the Board will likely recommend that he be Honorably Discharged, subject to Secretary of the Navy approval.

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LC [REDACTED], USN [REDACTED]

If approved, he will be discharged no later than 30 September 2003.

7. If you have questions concerning this matter, please contact  
CDR [REDACTED]

[REDACTED]

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



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

5420  
PERS-80

01 OCT 2002

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

Via: Assistant for BCNR Matters, PERS-00ZCB

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

Ref: (a) BCNR memo 5420 PERS-00ZCB of 05 SEP 02

Encl: (1) BCNR File 05388-02

1. Per reference (a) we are returning enclosure (1) recommending that you disapprove [REDACTED]'s request. The member requests removal of his failures to select for Commander and to have his status changed from S2 to S1 back dating it to 6 Aug 1996.

S1 S2 gr  
JM

2. [REDACTED] claims in his request that he was not properly counseled concerning the differences between S1 and S2 status. We concur completely with the response composed by PERS-911 and believe that [REDACTED] did in deed receive substantial and adequate counsel concerning his status in the Naval Reserve. The letter from PERS-911 dated 6 Aug 96, which he himself enclosed in his BCNR request, clearly explained that he needed to maintain a certain number of drill points per year, that he would be considered for promotion, and provided numbers to call if he had questions.

3. [REDACTED] properly considered by the FY-02 and FY-03 Reserve Commander Promotion Selection Boards. It is unfortunate that [REDACTED] did not continue his Naval Reserve career after 1996, but there is no basis for removing his failure of selection. We recommend you disapprove [REDACTED].

[REDACTED]

Director, Active and Reserve  
Officer Career Progression  
Division