



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

HD:hd
Docket No: 06689-02
4 November 2002

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

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

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

Encl: (1) DD Form 149 dtd 5 Jul 02 w/attachments
(2) PERS-80 memo dtd 27 Aug 02
(3) DCNO N131Y memo dtd 7 Oct 02
(4) Pers-8023 e-mail dtd 17 Oct 02
(5) Memo for record dtd 21 Oct 02
(6) 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 the applicable naval record be corrected to show the acceptance date of his commissioning as a lieutenant commander, U. S. Navy as 1 February 2002, vice 17 June 2002. He further requested removal of his failure of selection for promotion before the Fiscal Year (FY) 03 Line Commander Selection Board.

2. The Board, consisting of Messrs. Carlsen and Pfeiffer and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 24 October 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. The FY 03 Line Commander Selection Board convened on 19 February 2002. Petitioner failed of selection by this promotion board. The FY 03 Supply Corps (SC) Commander Selection Board convened on 11 March 2002. He was not considered, as he was not commissioned as an SC officer until after this promotion board had convened.

c. Title 10, United States Code, section 628(a)(1) mandates that a special selection board be convened to consider a person who should have been considered by a regular officer promotion selection board, but was not considered because of an administrative error. Section 628(a)(3) provides that if the special selection board convened under section 628(a)(1) does not select the person for a grade below flag officer grade, the person shall be considered to have failed of selection for promotion.

d. In correspondence attached as enclosure (2), PERS-80, the Navy Personnel Command (NPC) office having cognizance over officer promotions, commented to the effect that Petitioner's request should be denied.

e. In correspondence attached as enclosure (3), N131Y, the Deputy, Chief of Naval Operations office having cognizance over the human resources officer community, with special expertise concerning the circumstances of Petitioner's transition from line to staff, has commented to the effect that his request should be approved.

f. In e-mail attached as enclosure (4), NPC Code Pers-8023, having reviewed the N131Y opinion, concurred with the recommendation to remove Petitioner's failure of selection by the FY 03 line board. They recommended against a special board for the FY 03 SC board Petitioner missed, as they felt this would result in a failure of selection.

g. The memorandum for the record at enclosure (5) documents that a representative of the Bureau of Naval Personnel (N131F2) assured that action by this Board correcting Petitioner's record to show commissioning as an SC officer on 1 February 2002 would not cause cognizant Navy authorities to place the officer, without the officer's consent, before a special selection board for the FY 03 SC Commander Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the favorable advisory opinions, the Board finds an injustice warranting the requested relief.

The Board concludes it is not mandatory, under title 10, United States Code, section 628(a)(1), for Petitioner to have a special selection board for the FY 03 SC Commander Selection Board. In this regard, they note he was, in reality, still a line officer when this promotion board met, so he was correctly not considered by this board.

The Board recognizes they could grant Petitioner a special selection board for the FY 03 SC Commander Selection Board on the basis of the corrected record, reflecting he became an SC officer before the convening of this promotion board, which did not consider him. However, they do not feel this would be remedial, as Petitioner did not request it; and NPC has advised that if he were considered by such a special selection board, a failure of selection might well result, which would effectively negate the benefit of removing his failure by the FY 03 Line Commander Selection Board.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show the acceptance date of his commissioning as a lieutenant commander, SC, U. S. Navy as 1 February 2002, vice 17 June 2002.


b. That Petitioner's record be corrected further so that he be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

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.

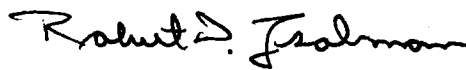
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.


For W. DEAN PFEIFFER
Executive Director



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

5420
PERS-80

27 AUG 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LCDR [REDACTED] FEBORN, S [REDACTED]

Ref: (a) CNO Washington DC 152150Z Oct 01
(b) SECNAVINST 1210.5A

Encl: (1) BCNR File 06689-02

1. Enclosure (1) is returned, recommending disapproval of LCDR [REDACTED] request for removal of his failure of selection resulting from the FY-03 Active-Duty Commander Line Promotion Selection board. We also recommend that [REDACTED]'s request to have his effective date of appointment in the Supply Corps changed to 01 Feb 02 be disapproved.

2. [REDACTED]'s status made him eligible before the FY-03 Commander Active Line promotion selection board as convened. Per reference (a), [REDACTED] is approved for transition from the Fleet Support community to the Supply Corps in Oct 01. The message states that, "Change of designator effective 01 Oct 01 with the following exceptions:..officers selected for the Supply Corps will retain the 1100 designator pending senate confirmation." Reference (b) requires officers who transfer between the line and the staff corps be appointed under section 5582 of Title 10 USC and that such appointment be made by the President, by and with the advice and consent of the Senate. Senate confirmation occurred on 21 Mar 02. [REDACTED] was still designated as an 1100 at the time of the FY-03 Commander promotion selection board and was correctly considered as such.

[REDACTED]

Director, Active and Reserve
Officer Career Progression
Division



IN REPLY REFER TO

5450
N131Y
7 Oct 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
FLEET SUPPORT OFFICERS' REDESIGNATION TO SUPPLY CORPS

Ref: (a) PERS-80 Memo of 27 Aug 2002

1. Comments and recommendations in this memo pertain to the following officers:

[REDACTED]

2. Recommend approval of their requests for back-dating of effective date of commissioning as Supply Corps officers and removal of the failure of selection before the FY-03 Commander Unrestricted Line Promotion Board.

3. Reference (a) recommends disapproval of the above named officers' requests based on the fact that all procedures were properly followed regarding their redesignations. However, there were unexpected administrative delays that were not the fault of the officers concerned. Those delays slowed the process beyond reasonable expectations and had a negative impact on the officers' careers.

4. During the summer of 2001, the decision was made to disestablish the Fleet Support Community. Officers in that community (including those in paragraph one) were given the option to apply to two new communities (HR and IP) or other communities if they had the requisite background. A small number of officers applied for redesignation to Supply Corps and were selected to transfer during the September 2001 Special Redesignation Board. The above named officers received notification in Oct 2001 that they were selected for Supply Corps but would have to wait for Senate confirmation in accordance with Title 10 since they were transferring from Line to Staff Corps. In addition to these officers, five Fleet Support Officers in the grade of commander were also selected to transfer to the Supply Corps.

5. The names of the officers listed above were combined on a nomination with the Fleet Support Officers in the grade of commander selected for transfer to the Supply Corps. After protracted review, the Office of the Judge Advocate General determined that Title 10 prohibits regular officers above the grade of LCDR from transferring between Line and Staff Corps. Ultimately, the decision was made to remove the commanders from the nomination and the revised list of only the lieutenant commanders was forwarded to the Senate.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
FLEET SUPPORT OFFICERS' REDESIGNATION TO SUPPLY CORPS

6. The Fleet Support lieutenant commanders were approved by the Senate to redesignate to Supply Corps on 21 March 2002, approximately one month after the FY03 Commander Selection Board was convened. While there was no guarantee that their redesignation to Supply Corps would occur prior to the FY-03 promotion board, the entire redesignation process was scheduled to be completed prior the statutory boards. The process delay was administrative in nature, not the fault the officers concerned and the requested relief should be granted.

7. Should you require any further information I can be reached at [REDACTED]

[REDACTED]

[REDACTED]

Human Resources Officer
Community Manager

From: [redacted] [david.lanham@PERSNET.Navy.Mil]
Sent: Thursday, October 17, 2002 3:47 PM
To: [redacted]
Subject: [redacted] WITHDRAWAL OF ORIGINAL OPINION

[redacted]
Please use this email as authority to withdraw PERS-80 original opinion of not recommending relief for the following officers:

[redacted]
[redacted]
[redacted]

After reviewing the HRO Community Manager opinion, we concur with the recommendation to remove the failures to select from the line board.

We do not recommend a special board, as it is felt that this would result in a failure to select for each officer and thus having the officer end up as multiple failures on the FY-04 board this year.

Please use this email as authority to change the PERS-80 opinion to be as an approval.

If you have any further questions, please give me a call.

[redacted]
[redacted] tters
[redacted]
[redacted]