



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

BJG
Docket No: 8216-01
21 August 2002

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

Subj: LTCOL [REDACTED], USMCR (RET), [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 19 Oct 01 w/attachments
(2) Memo for record-dtd 9 Aug 02
(3) HQMC JAR7 memo dtd 17 Jun 02
(4) Memo for record dtd 26 Jul 02

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 his promotion to colonel, with the date of rank and effective date he would have been assigned, had he been selected for promotion to that grade by the Fiscal Year (FY) 1998 Active Reserve Colonel Selection Board. By implication, he also requested removal of his failures by the FY 1998 through 2001 Active Reserve Colonel Selection Boards. Enclosure (2) is a memorandum for the record (MFR) documenting that he withdrew his previous request for other relief.

2. The Board, consisting of Ms. Humberd and Suiter and Mr. Lippolis, reviewed Petitioner's allegations of error and injustice on 15 August 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. Petitioner was selected to colonel by a special selection board convened under title 10, United States Code (U.S.C.), sections 14502(e)(3) and 1552, for the FY 1998 Active Reserve Colonel Selection Board, from which he would have received a date of rank and effective date of 1 November 1997. His selection has been approved by the President and confirmed by the Senate.

c. In correspondence attached as enclosure (3), the Headquarters Marine Corps office with cognizance over the subject matter of this case has commented to the effect that Petitioner's request has merit and warrants favorable action. This advisory opinion recommends correcting his record to show that he was promoted to colonel as of 1 November 1997, and that his retirement on 1 August 2000 was in the grade of colonel.

d. Enclosure (4) is an MFR documenting that neither Petitioner nor his counsel would be submitting a rebuttal to the advisory opinion at enclosure (3).

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the requested relief.

Specifically, they find Petitioner's record should be corrected to show he was promoted on the retired list to colonel, with a date of rank and effective date of 1 November 1997, under title 10, U.S.C., sections 14502(e)(3) and 1552. In this connection, they agree with the advisory opinion, except they find no need to correct his record to show he retired as a colonel, when he did not request this. They note that correcting his record to show his promotion by a special selection board from the FY 1998 Active Reserve Colonel Selection Board requires removing his failures by the FY 1998 through 2001 Active Reserve Colonel Selection Boards.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on the date of this Report of Proceedings, he was promoted on the retired list to the grade of colonel, U.S. Marine Corps Reserve, with a date of rank and effective date of 1 November 1997, under title 10, U.S.C., sections 14502(e)(3) and 1552.

b. That his record be corrected further to show he has not failed of selection for promotion to colonel.

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
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
W. DEAN PFEIFFER
Executive Director

DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
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FACSIMILE: (703) 614-9857 OR DSN 224-9857

MEMORANDUM FOR THE RECORD

DATE: 9AUG02

DOCKET NO: [REDACTED]

PETITIONER (PET) [REDACTED], USMCR (RET)

PARTY CALLED: PET

TELEPHONE # [REDACTED]

WHAT I SAID: I ASKED PET IF HE WOULD BE WILLING TO WITHDRAW ALL OF HIS REQUESTS, EXCEPT FOR PROM TO COL AND APPROP BACKDATING.

WHAT PARTY SAID: PET ANSWERED IN THE AFFIRMATIVE.



BRIAN J. GEORGE

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MEMORANDUM FOR THE RECORD

DATE: 26JUL02

DOCKET NO: [REDACTED]


PETITIONER (PET): LTCC [REDACTED], USMCR (RET)

PARTY WHO CALLED: PET

TELEPHONE #: NA

WHAT I SAID: NA

WHAT PARTY SAID: PET INFORMED ME THAT NEITHER HE NOR HIS ATTY
WOULD BE SUBMITTING A REBUTTAL STATEMENT TO THE AO FROM HQMC
JAR7.


BRIAN J. GEORGE