



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

BAN
Docket No. 09713-08
14 October 2009

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memo 1430 Ser 811/514 of 24 Jul 09
(3) Email between [REDACTED] US Naval Academy and [REDACTED], BCNR dtd 5 Nov 08
(4) NAVPERS 1070/621 of 8 Oct 08
(5) Naval Information Operations Command memo 1500 Ser N00/560 of 18 Jun 09
(6) NAVPERS 1616/26 of 2 Jul 09
(7) Service 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 advancement to E-5/CTI2 from the March 2007, Navy-wide advancement exam, Cycle 195.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 28 September 2009 and, pursuant to its regulations, determined that the partial 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. The Board also considered an advisory opinion furnished by the Naval Personnel Command (NPC) attached as enclosure (2) that recommended no relief be granted.

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 participated in the March 2007, Navy-wide advancement exam for E-5/CTI2. She was selected for advancement with an effective date of 16 September 2007, enclosure (1). However, on 26 June 2007, Petitioner was discharged from the Navy as an E-4, (before her effective date of advancement), and was appointed as a midshipman

to the United States Naval Academy. On 2 June 2008, Petitioner was subsequently discharged from the Naval Academy for voluntary reasons and not due to any academic or legal issues, enclosure (3). On 5 September 2008, she reverted to her enlisted status to complete the remaining term of her initial contract. On 5 September 2008, she voluntarily extended to incur sufficient obligated service to accept orders, enclosure (4).

c. On 7 October 2008, Petitioner submitted a request to the Board for Corrections of Naval Records, requesting to be advanced retroactively to E-5/CTI2 from the March 2007, advancement exam. Petitioner claims that since she was "frocked" as an E-5, she should be allowed to be advanced to E-5. Her commanding officer favorably endorsed her request, enclosure (5).

d. In an advisory opinion, enclosure (2), NPC recommended that no relief be granted. Their recommendation is based on Chief of Naval Operations Instruction 1420.1, which states "former fleet Sailors that disenroll from the Naval Academy or NAPS for reasons other than acceptance of a commission or a physical disability will revert to the enlisted status held immediately prior to entry into the Naval Academy/NAPS". Petitioner was never advanced to E-5. She was in a selectee status and only "frocked" to E-5. Being "frocked" is a privilege, not a right, given by the commanding officer to allow the service member to wear the rank to which they are to be advanced before actually being paid. In Petitioner's case, she was scheduled to be advanced 16 September 2007, but was discharged to accept an appointment before actually being advanced.

CONCLUSION:

Upon review and consideration of all the evidence of the record, the Board concludes that Petitioner's request warrants partial favorable action. The Board finds that although Petitioner was not actually advanced to E-5/CTI2, but only "frocked" to an E-5, she was still continuously affiliated with the naval service by attending the Naval Academy. The Board determined that Petitioner would have been advanced if not for the Naval Academy. The Board believed that withholding an advancement in such a case might create a disincentive for qualified Sailors who are already selected for advancement (but not yet actually advanced) from accepting Naval Academy appointments. The Board noted that her service has been exemplary, enclosure (6). Therefore, the Board believed that as a matter of fairness, Petitioner should be advanced to E-5/CTI2, effective the date she signed her new extension contract on 5 September 2008.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was advanced to E-5/CTI2 from the date of her new extension contract date of 5 September 2008.

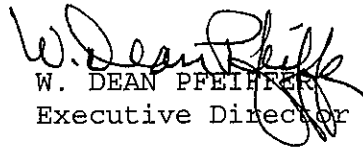
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



WILLIAM J. HESS, III
Acting Recorder


ROBERT D. ZSALMAN
Recorder

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



W. DEAN PFEIFFER
Executive Director

Reviewed and approved:



Acting AGC (MARA)
10/27/2009