



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

BAN
Docket No. 02515-11
24 August 2011

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]
[REDACTED]

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

- Encl:
- (1) DD Form 149 w/attachments
 - (2) Navy Policy and Plans Office (N132) memo 5800 Ser N13/234 of 17 Jun 11
 - (3) BCNR Questionnaire in case of [REDACTED]
 - (4) Department of the Navy Profile Sheet for the March 10 Navy-wide advancement examination (rec'd PNA points, but later invalidated)
 - (5) Department of the Navy Profile Sheet for the Sept 10 Navy-wide advancement examination (Selectee)
 - (6) Department of the Navy Profile Sheet for the Sept 10 Navy-wide advancement examination (Invalidated)
 - (7) SECNAV Instruction M-5510.30 of Jun 06
 - (8) BUPERSINST 1430.16F of 2 Nov 07
 - (9) Commanding Officer's endorsement ltr 1418 Ser 00/091 of 6 Mar 11
 - (10) JCAVS Summary date 15 Apr 11

1. Pursuant to the provisions of reference (a) Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to validate his September 2010 cycle 208, Navy-wide advancement examination and show that he met the criteria to be advanced to E-4/AO3.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 28 July 2011 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. The Board also considered enclosure (2) which is a recommendation

from the CNO Navy Policy and Plans Office (Code N132) that 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 entered active duty service in February 2009. He attended AO "A" school in the spring 2009. Upon completion of school he received transfer orders to the USS RONALD REAGAN (CVN-76) in August 2009. Shortly thereafter, he was advanced to E-3 in November 2009. Enclosure (3).

d. In March 2010, Petitioner participated in the E-4/AO3 Navy-wide advancement examination. He passed but did not advance to the next higher pay-grade. His exam was never invalidated due to not having a valid security clearance. Enclosure (4). However, in September 2010, Petitioner again participated in the E-4/AO3 Navy-wide advancement examination. At both times, Petitioner, his chain of command, his educational service officer and his command career counselor all believed he was fully eligible to participate in the exam cycles. In November 2010, the advancement results were released and Petitioner was notified that he achieved the cutting score and was designated as a "selectee". Enclosure (5).

e. In February 2011, before his effective date of advancement, his examination was invalidated by the Naval Education and Training Professional Development and Technology Center (NETPDTTC) because he did not have (and never had) a final adjudicated security clearance. Enclosure (6).

f. Navy regulations require members who are serving in certain ratings to have security clearance eligibility,¹

¹ Pursuant to the SECNAV M-5510.30, June 2006, the term "security clearance eligibility" has replaced "security clearance," when referring to a formal determination made by an authorized adjudicative entity that an individual meets national security standards. Security clearance eligibility is officially recorded and subject to due process procedures. Security clearance now refers to a state that exists whenever eligibility has been properly established by an authorized adjudicative entity and access has been properly authorized by the command. Security clearance is understood to exist at the level of access authorized. When a command authorizes access to classified information pending completion and formal adjudication of the

enclosure (7). Additionally, under the BUPERSINST 1430.16F (Navy Advancement Manual), members in those ratings who do not have a continuous security clearance eligibility are not authorized to compete for advancement ². Enclosure (8).

g. In early March 2011, Petitioner applied for a security clearance. Prior to receiving his final adjudication, his command allowed him, yet again, to take the advancement exam in mid March 2011.

h. In March 2011, Petitioner also submitted a DD Form 149 to the Board for Correction of Naval Records seeking to have his September 2010 advancement exam validated retroactively. He states that it was "one of the most demoralizing, embarrassing, and surprising experiences I have ever been through. I assumed everything with my security clearance went through since I never received any negative feedback...I received my orders and transferred, I was sure I already had one". Enclosure (1). He had submitted his SF 86 long ago. He had graduated from AO "A" school. He had advanced from E-1 to E-3. He was performing the duties of his rate. And he had been allowed to participate in the several advancement exams. He had never been held back in any way from progressing through his career due to security clearance issues and he was not aware that there was a deficiency. Enclosure (1).

i. Petitioner's commanding officer strongly endorses his request. He states that "due to an administrative oversight and through no fault of [REDACTED], he was allowed to participate in the September 2010 advancement examination and subsequently scored high enough to be selected for promotion...and frocked on 16 November 2010. The Education Services Office failed to check the required security clearance...and allowed him to participate in the exam". Enclosure (9).

j. In April 2011, Petitioner's security clearance was finally adjudicated by the Department of the Navy Central Adjudication Facility (DONCAF). Petitioner was granted a

required PSI, this action was termed "interim clearance" in the past. However, EO 12968 standards more accurately refer to this action as "temporary access" because it is an access determination under command purview. It is not a clearance determination and it carries no due process benefits.

² All personnel designated in certain ratings and special programs as listed in table 2-3 of BUPERSINST 1430.16F, states "must maintain, as a minimum, continuous security clearance eligibility" (Table 2-3 lists AC, AE, AG, AO, AT, AW, AZ, CT, EOD, ET, FC, FT, GM, HT, IC, IS, IT, LN, MA, MC, MN, MT, ND, OS PC, QM, SB, SO, STG, STS, and YN; Air crew and Nuclear Trained Personnel).

security clearance. The favorable adjudication took only 34 days. Enclosure (10). Petitioner had never "lost" or had his security clearance revoked at any time. In fact, for the entire time he had been in military service, he had worked in a classified rating with classified material, under a temporary access security clearance granted to him by the commanding officer pursuant to the SECNAV M-5510.30 Instruction.

k. By enclosure (2), Navy Plans and Policy Office (N132) recommended that no relief be granted. They reason as follows: (1) Under the governing instruction, he was not qualified to participate in the exam cycle; (2) Allowing him to advance would be unfair to other Sailors who were properly barred from taking exams for the same reasons at other commands; and (3) Although it is unfortunate that his exam was invalidated through no fault of his own, a command admission of error is not adequate justification for violation of the policies.

CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board determined the following: The following factors militated in favor of relief: The Board was convinced that Petitioner and the Navy were unaware of any deficiencies in his clearance status prior to February 2011; he had submitted the SF 86 much earlier; his career progression had not been impeded in any way; he had attended schools, transferred, taken advancement exams, advanced and worked in his rating free from any impediment. Once the error was identified, it was quickly rectified, suggesting that if it had been identified earlier, it would have been resolved earlier. Petitioner's commanding officer places the responsibility for the error on the education service officer (the office that verifies that Sailors are authorized and qualified to take an advancement exam), and not on the Petitioner. He strongly endorses Petitioner's request. Furthermore, the Board carefully considered the comments made in enclosure (2). The Board understood that, under the applicable regulations, Petitioner was strictly ineligible to participate in the exam. And the Board understood that there may be others who were properly barred from competing for advancements due to security clearance deficiencies. However, balancing the factors that militate in favor of relief against those that militate against, in the Board's view, the matter he should be resolved in favor of the Petitioner. Therefore, the Board concludes that the record should be corrected to validate Petitioner's E-4/A03 advancement examinations from the March and September 2010,

cycles 207 and 208, and that any PNA points that may have been taken away from the March 2010 exam be returned.

RECOMMENDATION:

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


a. Petitioner's E-4/AO3 advancement examination for cycle 208 will be revalidated. Petitioner will be advanced to E-4/AO3 at the time he would have advanced if the exam had not been invalidated.

b. Petitioner's E-4/AO3 advancement examination for cycle 207 will be revalidated and given PNA points as earned based on the results of the exam.


c. That a copy of the Report of Proceedings, be filed in the 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 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


WILLIAM J. HESS, III
Acting Recorder

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


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:

See Attached Decision Memorandum.
