



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

BAN
Docket No. 06780-11
4 November 2011

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Naval Personnel Command (NPC) memo 1430 Ser 811/445
of 14 Sept 11
(3) Office of the Assistant Secretary, Manpower and
Reserve Affairs, Limited Delegation of Authority memo
27 Sept 11
(4) NETPDTC Form 1430/3 for advancement cycle 208

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 her E-6/AZ1 Navy-wide advancement examinations and show that that she was advanced to E-6/AZ1 from the September 2010 Navy-wide advancement examination.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios reviewed Petitioner's allegations of error and injustice on 24 October 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 Navy Personnel Command (NPC) Code 811 (Career Progression Department) 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. Under BUPERINST 1430.16F, (Advancement Manual for Enlisted Personnel of the U.S. Navy and U.S. Navy Reserve), all personnel designated in certain ratings, including Petitioner's rating, "must maintain, as a minimum, continuous security clearance eligibility." This provision has been interpreted by NPC to mean that, in order to be eligible to participate in an advancement cycle, take an advancement exam or advance to the next highest grade, a Sailor in one of the designated ratings must hold a final clearance which has been adjudicated and granted by the Department of the Navy Central Adjudication Facility (DONCAF).

c. Petitioner entered the Navy in 2001. Over the next nine years, she advanced from E1 to E5 and participated in multiple E6 advancement cycles. During this time, she did not have a DONCAF adjudicated security clearance. In 2011, upon realizing that she did not have the required clearance, NPC invalidated the results of her E6 advancement cycles entirely. Petitioner avers that she was unaware of any deficiency in her clearance status. She cites the Navy's actions between 2001 and 2011 as evidence that she reasonably believed she was qualified to compete for advancement. The issue in this case is whether, under the circumstances, her record should be changed to validate the results of the E6 exam cycles.

d. Examination of Petitioner's naval record reveals the following: Petitioner enlisted in the Navy in July 2001. She completed and submitted the standard security questionnaire documents required of all enlistees. She attended and graduated AZ "A" in December 2001, then transferred to the VR-1, where she participated in the E-4/AZ3 Navy-wide advancement exam and was selected for advancement in February 2004. She then transferred to VFA-201 in May 2005, and participated in the E-5/AZ2 exam and was also selected for advancement in March 2006. In March 2007, Petitioner transferred to the NOSG Forth Worth. She participated in E-6 advancement exams in September 2008, March 2009 and September 2009. She passed the exams, but did not achieve the final multiple score necessary to advance but received "Passed but not Advanced" (PNA) points.

e. In January 2010, Petitioner was notified that she needed to re-submit another security clearance request through the e-quip website. She complied with the request, just as she had done in 2001 when she first enlisted. There is no evidence that she was informed that she was ineligible to compete for advancement.

f. In February 2010, Petitioner transferred to VR-58, and participated in the March 2010 exam and PNA'd the exam. However, because of her passing exam scores, she was entitled to and received PNA points. Those points may be used in subsequent exam cycles to raise a participant's final multiple score. Her exam was not invalidated nor was she told that she did not have a valid security clearance to participate in the exam.

g. In September 2010, Petitioner again participated in the E6/AZ1 advancement exam. Her exam was scored. However, she was not initially selected for advancement due to a miscalculation of her performance mark average. Her command submitted the corrected documentation to the Naval Personnel Command (NPC).¹ NPC corrected her score and was now a "selectee" for advancement. Petitioner was never made aware of any security clearance issues or a lack thereof by NPC. In addition, Petitioner did not participate in the March 2011 exam since she believed she was already selected to advance. In May 2011, she was notified that her September 2010 exam was invalidated due to not having a final adjudicated security clearance. Apparently, neither Petitioner, her command, nor NPC were aware that she was ineligible to participate in the exam cycles. There is no evidence that she was ever notified that she was ineligible to participate in advancement exams or to advance.

h. In addition, NPC invalidated the results of all of her prior E6 advancement exams. This had the effect of depriving her of PNA points (earned on prior advancement cycles). NPC took this action because they learned that Petitioner had never had a DONCAF adjudicated security clearance.

i. In June 2011, after being notified of the deficiency in her clearance status, Petitioner re-submitted the required security questionnaire documents to obtain the required security clearance. She received her final adjudicated security clearance promptly without undue difficulty or hindrance on 12 August 2011.

j. In September 2011, with her final adjudicated clearance, she participated in the E6/AZ1 Navy-wide advancement examination; however, the results have not yet been released.

k. Petitioner has applied to this Board seeking to have her E6 advancement exams validated retroactively for PNA points

¹ Even during the rescoring, NPC did not recognize or apprehend that she did not have a clearance.

to apply toward her September 2010 advancement exam. She states that she was unaware that her clearance status was deficient. She had submitted the required security questionnaire documents long ago upon entering the Navy. She had graduated from AZ "A" school and been transferred several times. She had advanced from E-1 to E-5. She was serving in her rate, and she had been allowed to participate in several exam cycles. She had never been held back in any way from progressing through her Navy career due to security clearance issues and she was not aware that there was a deficiency. Petitioner's commanding officer has favorably endorsed her request.

l. Review of the "Plan of the Week" (POW) for the September 2010 exam from her previous command (VR58) fails to disclose any evidence that the requirement to hold a security clearance was widely known or publicly announced.²

m. Review of Petitioner's last Worksheets for the previous E-6 exams also fails to disclose any evidence that Petitioner was notified or aware of the requirement to hold a security clearance in order to participate in the advancement cycle. Nor does it disclose any evidence that Petitioner was aware of any deficiency in her clearance status.

n. Petitioner had never "lost" or had her security clearance revoked at any time. During his service in the Navy, she has never been involved in misconduct to lose or forfeit her security clearance. For the entire time she has been in the Navy, after her initial training, she served in her rating.

o. By enclosure (2), NPC Code 811 (Career Progression Department) recommends that no relief be granted. NPC reasons as follows: (a) Under the governing instruction, she was not qualified to participate in the exam cycle; (b) Allowing her to advance would be unfair to other Sailors who were properly barred from taking exams for the same reasons at other commands; and (c) Although it is unfortunate that her exam was invalidated through no fault of her own, a command admission of error is not adequate justification for violation of the policies.

CONCLUSION

Upon review and consideration of all the evidence, the Board concludes that Petitioner's request warrants favorable action. The Board determined the following: The Board was

² Petitioner has also provided a copy of her current command's POW. The POW's do not mention anything regarding Sailors needing a final adjudicated clearance in order to compete for advancement.

convinced that both Petitioner and the Navy were unaware of any deficiencies in her clearance status that would disqualify her from participating in an exam cycle prior to mid-2011. Her career progression had not been impeded in any way. She had attended schools, transferred, taken advancement exams, advanced and worked in her rating free from any impediment. Once the deficiency was identified, it was rectified, suggesting that if it had been identified earlier, it would have been resolved earlier. Petitioner's commanding officer endorses Petitioner's request and finds that the errors in this case are not attributable to the Petitioner. 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. However, balancing the factors that militate in favor of relief against those that militate against, in the Board's view, the matter should be resolved in favor of the Petitioner. Therefore, the Board concludes that the record should be corrected to validate Petitioner's E-6/AZ1 advancement examinations from the relevant cycles and Petitioner should be advanced from the September 2010 exam cycle.

RECOMMENDATION:


That Petitioner's naval record be corrected, where appropriate, as follows:

- a. Petitioner's E-6/AZ1 September 2008, March 2009, September 2009, March 2010, and September 2010, Navy-wide advancement examinations will be revalidated.
- b. Petitioner will receive PNA points from the September 2008, March 2009, September 2009, and March 2010 Navy-wide advancement exams.
- c. Petitioner was advanced from the September 2010 Navy-wide advancement cycle with an effective date of 16 June 2011 with a Time In Rate date of 1 January 2011.
- d. A copy of this Report of Proceedings will be filed in 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. Pursuant to the delegation of authority set out in enclosure (3) and having assured compliance with the provisions of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723), it is hereby announced that the foregoing corrective action, has been approved by the Board on behalf of the Secretary of the Navy.

4 November 2011


For W. DEAN PFEIFFER
Executive Director