



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD SUITE 1001
ARLINGTON VA 22204-2490

BAN
Docket No. 11700-11
13 March 2012

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

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

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

Encl: (1) DD Form 149 w/attachments
(2) Naval Personnel Command (NPC) memo 1430 Ser 811/550
of 8 Dec 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 his E-4/MC3 Navy-wide advancement examination and show that he met the criteria to be advanced to E-4/MC3 from the September 2010 advancement cycle.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George reviewed Petitioner's allegations of error and injustice on 13 February 2012 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 2009. Over the next year, he advanced from E1 to E3 and participated in an E-4 advancement cycle. During this time, he did not have a DONCAF adjudicated security clearance. In 2011, upon realizing that he did not have the required clearance, NPC invalidated the results of his E-4 advancement cycle entirely. Petitioner avers that he was unaware of any deficiency in his clearance status that would disqualify him from competing for advancement. He cites the Navy's actions between 2009 and 2010 as evidence that he reasonably believed he was qualified to compete for advancement. The issue in this case is whether, under the circumstances, his record should be changed to validate the results of the E-4 exam cycle.

d. Examination of Petitioner's naval record reveals the following: Petitioner enlisted in the Navy in July 2009. He completed and submitted the standard security questionnaire documents required of all enlistees. He attended and graduated from Mass Communication (MC) "A" school in September 2009. Petitioner then transferred to the USS CARL VINSON in March 2010.

e. In September 2010, Petitioner participated in the E-4/MC3 advancement exam and was selected for advancement with an effective date of 16 June 2011. He was frocked in December 2010. Apparently, neither Petitioner, his command, nor NPC were aware that he was ineligible to participate in the exam cycle. There is no evidence that he was ever notified that he was ineligible to participate in an advancement exam or to advance.

f. In approximately April 2011, NPC invalidated the results of his September 2010 advancement exam. This had the effect of setting aside his scheduled advancement from the

September 2010 cycle. NPC took this action because they learned that Petitioner had never had a DONCAF adjudicated security clearance.

g. In April 2011, after being notified of the deficiency in his clearance status, Petitioner re-submitted the required security questionnaire documents to obtain the required security clearance. However, by this time, he had missed the opportunity to participate in the March 2011 exam cycle. However, in September 2011, his command allowed him to take the E-4/MC3 advancement exam even though his clearance was still pending. NPC did not invalidate the March 2011 exam). Petitioner received his final adjudicated security clearance without undue difficulty or hindrance on 26 September 2011.

h. Petitioner has applied to this Board seeking to have his E-4 September 2010 advancement exam validated retroactively for advancement. He states that he was unaware that his clearance status was deficient. He had submitted the required security questionnaire documents long ago upon entering the Navy. He had graduated from MC "A" school without any prior issues. He had been advanced to E-3 and transferred to sea duty. He had never been held back in any way from progressing through his Navy career due to security clearance issues and he was not aware that there was a deficiency that would disqualify him from competing for advancement. Petitioner's commanding officer (CO) has strongly endorsed his request stating "upon his arrival it was discovered he did not have a security clearance and I granted him an interim security clearance based on the fact that we had no information that would disqualify him from receiving a clearance. I then allowed him to take the test based on reference (b), [BUPERSINST 1430.16F] requiring a member to be eligible for a clearance, which I determined that he was".

i. Review of the "Plan of the Day" (POD) from his current command for the September 2010 examination fails to disclose any evidence that the requirement to hold a security clearance was widely known or publicly announced.¹

j. Review of Petitioner's last Worksheet, (enclosure 4) for the September 2010 exam 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

¹ Petitioner has provided a copy of his command's POD for the September 2010 Navy-wide advancement exam. The POD's do not mention anything regarding Sailors needing a final adjudicated clearance in order to compete for advancement.

cycle. Nor does it disclose any evidence that Petitioner was aware of any deficiency in his clearance status.

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

l. By enclosure (2), NPC Code 811 (Career Progression Department) recommends that no relief be granted. NPC reasons as follows: (a) Under the governing instruction, he was not qualified to participate in the exam cycle; (b) 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 (c) 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, the Board concludes that Petitioner's request warrants favorable action. The Board determined the following: The Board was convinced that both Petitioner and the Navy were unaware of any deficiencies in his clearance status that would disqualify him from participating in an exam cycle in 2010. His career progression had not been impeded in any way. He had attended schools, transferred, and worked in his 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 strongly 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-4/MC3 advancement examination from the relevant cycle.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate,

as follows:


a. Petitioner's E-4/MC3 September 2010 Navy-wide advancement examination will be revalidated.

b. Petitioner was advanced from the September 2010 Navy-wide advancement examination with an effective date of 16 June 2011 and a Time In Rate date of 1 January 2011.

c. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

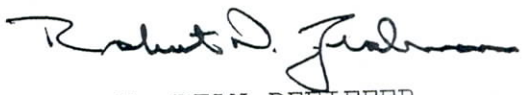
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings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

13 March 2012


For W. DEAN PFEIFFER
Executive Director