



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

HD  
Docket No. NR9148-13  
22 May 2014

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

Subj: LT [REDACTED], MSC, USNR, [REDACTED];  
REVIEW OF NAVAL RECORD (RECONSIDERATION)

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

- Encl: (1) DD Form 149 undtd w/attached brief  
(counsel brief dtd 23 Aug 10 w/enclosures)  
(2) HD:hd Docket No. 0974-10 ltr dtd 21 Oct 10  
w/enclosure  
(3) HD:hd Docket No. 04380-11/0974-10 ltr dtd 27 Apr 11  
(4) U.S. Ct of Fed Claims remand order dtd 11 Dec 13  
(5) OJAG Code 13 ltr 5420 SER 13/1BC0428.14 undtd  
(6) Subject's ltr dtd 22 Apr 14  
(7) PERS-802 e-mail dtd 30 Apr 14  
(8) BCNR e-mail dtd 1 May 14 and  
PERS-802 replies dtd 1 and 19 May 14  
(9) Subject's e-mail dtd 1 May 14  
(10) OJAG Code 13 e-mail dtd 7 May 14  
(11) Subject's ltr dtd 12 May 14

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 his promotion to lieutenant junior grade (pay grade O-2) with a date of rank and effective date of 6 June 2007 (the day after his disenrollment from the Uniformed Services University of the Health Sciences (USUHS)), and promotion to lieutenant (pay grade O-3) with a date of rank and effective date of 6 June 2009 (his due course lieutenant date of rank, with a 6 June 2007 lieutenant junior grade date of rank, would be 1 July 2009).

2. The Board, consisting of Messrs. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 22 May 2014, 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 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. Enclosure (1) was filed in a timely manner.

c. Enclosure (2) shows that the Board denied Petitioner's request on 21 October 2010. Enclosure (3) shows the Board's staff denied counsel's request for reconsideration on 27 April 2011.

d. Enclosure (4), the remand order from the United States Court of Federal Claims, directed that the Board (1) determine whether Secretary of the Navy Instruction (SECNAVINST) 1421.4D continued to apply to Petitioner because it was in effect when he was enrolled at the USUHS, or alternatively, whether SECNAVINST 1412.6L was meant to apply retroactively, and explain the basis for the conclusion; (2) determine whether, and on what dates, Petitioner was on the Active-Duty List (ADL); (3) determine whether, and on what dates, Petitioner was on the Reserve Active-Status List (RASL); (4) make any further determination considered relevant; and (5) determine whether Petitioner's request for promotion should be granted in light of these conclusions.

e. In enclosure (5), the Office of the Judge Advocate General (Administrative Law/Code 13) addressed the issues specified in the remand order. Code 13 concluded that Petitioner was properly not promoted to lieutenant junior grade while he was in a student status. That office further concluded that when he received his original appointment in the Medical Service Corps (MSC), United States Navy, he should have received one half entry grade credit (EGC) for his service at USUHS, from 21 June 2004 to 5 June 2007. Code 13 stated that his appointment to the MSC was on 23 June 2009, but he actually accepted this appointment on 22 December 2009 (23 June 2009 is the ensign date of rank he was originally assigned, later corrected to 6 June 2007). On 1 November 2012, he accepted appointment as a lieutenant, MSC, United States Navy Reserve with a date of rank of 1 July 2011.

f. Enclosure (6) is Petitioner's reply to enclosure (5), in which he maintained his position that he warranted promotion to

lieutenant junior grade in June 2007. He noted that between his disenrollment from USUHS and his appointment in the MSC, he held the designator and wore the insignia of a Medical Corps (MC) officer, and that "The Navy had provisions to appoint officers in the [MC] to the rank of [lieutenant junior grade]." Petitioner was never appointed to the MC as he did not graduate from medical school.

g. In enclosure (7), the Navy Personnel Command (PERS-802) commented to the effect that Petitioner should not be granted any relief.

h. In enclosure (8), PERS-802 stated that if Petitioner is granted one half EGC for his service at USUHS, he would receive one year and six months of EGC, so his MSC constructive ensign date of rank would change from 6 June 2007 to 5 December 2005; his constructive date of promotion to lieutenant junior grade from 6 June 2009 to 5 December 2007; and his date of promotion to lieutenant from 1 July 2011 to 1 January 2010.

i. Enclosure (9) is Petitioner's acknowledgment that he had received the PERS-802 input at enclosure (7).

j. In enclosure (10), Code 13 stood by the conclusions reflected in enclosure (5), and noted that PERS-802 cited no authority for its contrary conclusion that Petitioner should not receive any EGC for his service at USUHS.

k. In enclosure (11), Petitioner contended that both Code 13 and PERS-802 are wrong, and he asserted that his original appointment as a health professions officer was on 21 June 2004 (the date he enrolled at USUHS).

#### CONCLUSION:

Upon review and consideration of all the evidence of record, especially in light of the advice from Code 13, and notwithstanding the opposing view of PERS-802, the Board finds an error warranting partial relief, specifically, awarding Petitioner half EGC for his service at USUHS, with corresponding adjustment, consistent with the PERS-802 input at enclosure (8), of his constructive MSC ensign date of rank from 6 June 2007 to 5 December 2005; correction of his record to show his appointment on 22 December 2009 to the MSC was in the grade of lieutenant junior grade, rather than ensign, with a date of rank of 5 December 2007; and further correction to adjust his date of promotion to lieutenant from 1 July 2011 to 1 January 2010. The Board adopts the Code 13 responses to the issues specified in the

remand order. In view of the above, the Board recommends the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected further to show his appointment to the MSC, United States Navy on 22 December 2009 was in the grade of lieutenant junior grade, rather than ensign, with a date of rank of 5 December 2007.

b. That his record be corrected further to show he was promoted to lieutenant with a date of rank and effective date of 1 January 2010, rather than 1 July 2011.

c. That his record be corrected further to show the date of rank on his appointment as a lieutenant, MSC, United States Navy Reserve as 1 January 2010, rather than 1 July 2011; and that his lineal precedence be adjusted accordingly.

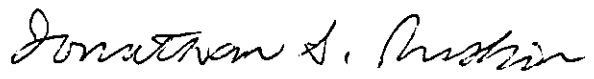
d. That any material or entries inconsistent with the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

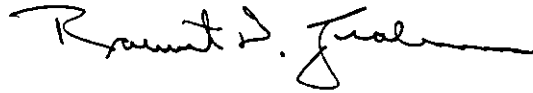
f. That the remainder of Petitioner's request be denied.

4. 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  
Acting Recorder

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



ROBERT D. ZSALMAN  
Acting Executive Director

Reviewed and approved:



5/27/14

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REC'D MAY 27 2014