



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

JSR
Docket No. NR5679-14
26 June 2014

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 7 Apr 14 w/attachments
(2) BCNR rept to SECNAV JSR Docket No: 10332-12
dtd 23 May 13 less enclosures
(3) HQMC JAR4 memo dtd 12 Jun 14
(4) HQMC MMPR memo dtd 19 Jun 14
(5) Subject's naval 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 by removing his failure of selection by the Fiscal Year (FY) 2015 Major Selection Board and granting him consideration by a special selection board (SSB) for the FY 2014 Major Selection Board. He also requested setting aside action to effect his discharge from the Regular Marine Corps on 1 July 2014 by reason of his deemed failure of selection by the FY 2011 Major Selection Board and his FY 2015 failure of selection.

2. The Board, consisting of Messrs. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 26 June 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, naval records, 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. Petitioner was selected by the FY 2011 Major Selection Board. He was removed from the promotion list by operation of law (10 U.S.C. 629 required that his name be removed from the promotion list effective 1 June 2011 because he had not received Senate confirmation within the 18-month period following the date the promotion list was approved, 18 December 2009), and his removal constituted a failure of selection for promotion. He was not considered by the FY 2012 or 2013 Major Selection Board. In his previous case, docket number 10332-12 (copy of Report of Proceedings at enclosure (2)), this Board directed removing his failure of selection by the FY 2014 Major Selection Board on the ground that his record considered by that promotion board included derogatory information that has since been removed. He was considered by the FY 2015 Major Selection Board, with a record that had been corrected to remove the derogatory information and status as an officer who had previously failed of selection, and he failed of selection by that promotion board. His record, as it stood before the FY 2015 Major Selection Board, did not include any clarification that he had not failed of selection by the FY 2012, 2013 or 2014 Major Selection Board. In his application at enclosure (1), his counsel contended that his failure of selection by the FY 2015 Major Selection Board should be removed on the basis that he had not been notified that he would be considered by that promotion board, and therefore he was denied the opportunity to submit to that board correspondence that would have explained his circumstances.

c. In enclosure (3), the Headquarters Marine Corps (HQMC) Judge Advocate Division has commented to the effect that Petitioner's application should be approved in full. Specifically concerning his request to remove his failure of selection by the FY 2015 Major Selection Board, that office concluded that this request should be granted because the FY 2015 promotion board "did not have before it any information explaining the substantial difference between the petitioner's obvious seniority and the remaining in-zone officer population." and "Consequently, the logical implication was that the petitioner was passed over for promotion every year since the FY11 board."

d. In enclosure (4), the HQMC Promotion Branch concurred with the recommendation at enclosure (2) to remove Petitioner's

FY 2015 failure of selection and grant him SSB consideration for the FY 2014 Major Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (4), the Board finds an injustice warranting removal of Petitioner's failure of selection by the FY 2015 Major Selection Board, setting aside of action to effect his discharge on 1 July 2014, and entry in his record of a memorandum clarifying that he did not fail of selection by the FY 2012, 2013 or 2014 Major Selection Board.

The Board finds that Petitioner has not exhausted his administrative remedies regarding his request for SSB consideration for the FY 2014 Major Selection Board, as all the record corrections on which this request is based have already been effected. The Board finds that under Secretary of the Navy Instruction 1420.1B, he may submit this request to the Secretary of the Navy, via the HQMC Promotion Branch. Further, in accordance with the instruction, this request would require approval by the Secretary of the Navy himself, which might not be possible to obtain in time to prevent Petitioner's imminent discharge.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:


- a. That Petitioner's naval record be corrected by removing his failure of selection by the FY 2015 Major Selection Board.
- b. That any discharge or other action based in any way on Petitioner's failure of selection by the FY 2015 Major Selection Board be cancelled and, if necessary, that related documentation be removed from his record.
- c. That his record be corrected further by inserting, at an appropriate location, a memorandum to the effect that he did not fail of selection by the FY 2012, 2013, 2014 or 2015 Major Selection Board.
- d. That any material or entries inconsistent with or relating to 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 any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of 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 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. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


ROBERT D. ZSALMAN
Acting Executive Director