



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

HD:hd
Docket No: 04831-00
10 August 2001

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

Subj: LCDR [REDACTED], NC, USN [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 8 Jul 00 w/attachments
(2) PERS-86 memo dtd 18 Sep 00
(3) 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 that her naval record be corrected by removing her status as having twice failed of selection for promotion to commander. When she submitted her application, she had failed of selection three times, before the Fiscal Year (FY) 98 through 00 Naval Reserve Staff Commander Selection Boards. Since then, she has also failed by the FY 01 and 02 promotion boards. It is presumed she desires removal of all her failures of selection for promotion, so as to be considered by the selection board that next convenes to consider officers of her category for promotion to the grade of commander as an officer who has not failed of selection for promotion to that grade. She further requested clarification or elimination of the policy on which her transfer to non-pay status was based. The Board did not consider this request, as it is within the cognizance of the Commander, Naval Reserve Readiness Command, Region SIXTEEN and the Surface Reserve Force chain of command.

2. The Board, consisting of Messrs. Bishop, Morgan and Shy, reviewed Petitioner's allegations of error and injustice on 9 August 2001, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that she has been denied fair consideration for promotion because she was in a temporary not physically qualified (TNPQ) status from 21 April 1995 until 3 December 1997; and during that time, she was not allowed to drill and she received no fitness reports.

d. In correspondence attached as enclosure (2), the Navy Personnel Command office having cognizance over Naval Reserve officer promotions has recommended partial relief, specifically, removal of Petitioner's FY 98 failure of selection only. They stated she was in a record review (non-pay) status, as a result of having been found TNPQ, from 1 December 1995 to 11 June 1997; that they support removing her FY 98 failure because her TNPQ status during that period did not allow her to drill or have her performance evaluated; and that her FY 99 and 00 failures should stand, because when she returned to a fit for duty status in June 1997, she "had the opportunity to have her performance evaluated in conjunction with her peers thereby allowing her to compete equally for promotion on the FY-99 and FY-00 promotion selection boards." As Petitioner sustained her FY 01 and 02 failures of selection after this advisory opinion was submitted, the opinion did not address these failures.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting removal of all Petitioner's failures of selection for promotion. They agree with enclosure (2) in concluding that her FY 98 failure should fall. Notwithstanding the advisory opinion's comments to the effect that her later failures should not be removed, the Board finds these failures must be removed as well, to restore Petitioner to the status she enjoyed before the FY 98 board as not having failed of selection. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

- a. That Petitioner's record be corrected so that she be considered by the earliest possible selection board convened to consider officers of her category for promotion to commander as an officer who has not failed of selection for promotion to that grade.
- b. 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.
- c. 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. 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
JONATHAN S. RUSKIN
Acting Recorder

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

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

Joseph G. Lynch
NOV 28 2001

JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-86
SEP 18 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED], USNR

Encl: (1) BCNR File 04831-00 w/Service record

1. We are returning enclosure (1) recommending approval of Lieutenant Commander [REDACTED]'s request for removal of a failure of selection in FY-98. Further we recommend that her failure of selections in FY-99 and FY-00 remain.

2. Lieutenant Commander [REDACTED] was placed in a record review status (non-pay) as a result of being found Temporary Not Physically Qualified (TNPQ). She was in that status from 1 December 1995 to 11 June 1997. In June 1997 Lieutenant Commander [REDACTED] medical condition was reviewed by a Physical Evaluation Board (PEB) where she was determined to be fit for duty. Subsequently she was returned to a reserve unit in a pay status. Although Lieutenant Commander [REDACTED] was eligible and appropriately considered for promotion her TNPQ status did not allow her to drill nor to have her performance evaluated. Therefore, we support the removal of her failure of select in FY-98. When returned to a fit for duty status in June of 1997 Lieutenant Commander [REDACTED] had the opportunity to have her performance evaluated in conjunction with her peers thereby allowing her to compete equally for promotion on the FY-99 and FY-00 promotion selection boards.

3. Lieutenant Commander [REDACTED] current drill status and related policy concerns should be directed to REDCOM 16 and the Surface Reserve Force chain of command.

[REDACTED SIGNATURE]

Director, Naval Reserve Officer
Promotion, Appointments and
Enlisted Advancements Division