



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

LCC:lc  
Docket No. 5603-01  
4 October 2001

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

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

Encl: (1) DD Form 149 w/attachments  
(2) CMC memorandum 1400/3 MMPR-2 of 8 August 2001  
(3) Petitioner's Microfiche

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 Petitioner was promoted to paygrade E-5 effective 1 January 2000.

2. The Board, consisting of Messrs. Brezna, Milner, and Ms. McCormick reviewed Petitioner's allegations of error and injustice on 11 September 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 justice, finds as follows:

a. Petitioner was promoted to paygrade E-4 effective 1 June 1997. Because of a severe motor vehicle accident she elected to leave active duty and was discharged on 10 October 1998.

b. After full recovery from the accident Petitioner contacted a prior service recruiter (SSgt Pena) and was informed that she would be able to reenlist and retain the rank of corporal with a time in grade of 1 June 1997. Petitioner agreed to these conditions and reenlisted on 1 July 1999.

c. All of her enlistment processing documents were completed giving her the rank of corporal with an effective date of rank as 1 June 1997. The information was entered into the Marine Corps mechanized system as 1 June 1997. Petitioner went through several audits of her records and was never told that her time in grade was in error.

d. Petitioner was promoted to paygrade E-5 effective 1 January 2000. In April 2000 Petitioner was identified as having been promoted in error because her date of rank in paygrade E-4 was incorrect and she was administratively reduced to paygrade E-4.

e. Petitioner was subsequently considered for promotion to paygrade E-5 with a corrected date of rank in paygrade E-4 and was promoted to paygrade E-5 effective 1 December 2000.

f. Petitioner believes that since she was promised that she could reenlist with her original date of rank of 1 June 1997 and all her enlistment processing documents were completed reflecting the original date of rank and it was entered into the Marine Corps mechanized system that the date of rank should not have been changed. She also believes that she should retain her promotion to paygrade E-5 effective 1 January 2000.

h. In correspondence attached as enclosure (2), the office having cognizance over the subject matter involved in Petitioner's application, has commented to the effect that Petitioner's request should be denied. The advisory opinion relies on the fact that the effective date for paygrade E-4 of 1 June 1997 was in error, because her enlistment had been authorized by HQMC with an effective date of E-4 as date of enlistment, 1 July 1999.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (2), the Board finds the existence of an injustice warranting the requested relief. In this connection, the Board finds that Petitioner's promotion to paygrade E-5 with an effective date of 1 January 2000 should stand. When Petitioner enlisted for active duty with the Marine Corps all her enlistment processing documents reflected her original E-4 date of rank. The Board concludes that since Petitioner clearly signed her enlistment documents with the original date of rank and took her oath of enlistment believing that she was enlisting with the E-4 original date of rank the Marine Corps should not be able to change the terms of the contract at this late date.

Accordingly, the Board recommends the following corrective action.

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RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

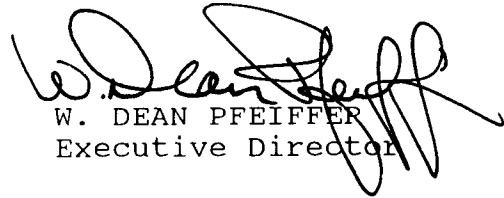
a. Petitioner was promoted to paygrade E-5 effective 1 January 2000.

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

  
G. L. ADAMS  
Acting Recorder

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

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

  
NOV 28 2001

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