



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

HD:hd
Docket No: 05662-00
4 June 2001

MR [REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

This is in reference to your letter dated 17 August 2000, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. Your previous case, docket number 7236-99, was denied on 3 August 2000.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 31 May 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your letter, together with all material submitted in support thereof, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 17 October and 7 November 2000, copies of which are attached. The Board also considered your letter dated 24 May 2001 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board found that even if you had been considered by the 19 May 1999 Mobilization Disposition Board, and you had been transferred to Standby Reserve - Inactive status as a result of approval of a board recommendation, the transfer could not have occurred until after the Fiscal Year (FY) 00 Naval Reserve Line Lieutenant Commander Selection Board had adjourned. This means you were properly in an active status while the selection board was in session, so your failure of selection was valid in any event. The Board further noted that as a result of review by the Mobilization Disposition Board, you could have been discharged, rather than transferred to inactive status. Since the Board still found insufficient basis to remove your failure by the FY 00 promotion board, they still had no grounds to set aside your discharge from the Naval Reserve on 1 April 2000. In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



5662-00

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

5420
PERS-911
17 Oct 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: REQUEST FOR FURTHER COMMENTS AND RECOMMENDATIONS ICO
FORMER [REDACTED] USNR, [REDACTED]

Ref: (a) BCNR memo 5420 PERS-OOZCB of 8 Sep 00
(b) PERS-911 memo to BCNR of 10 Apr 00
(c) SECNAVINST 1920.6B

Encl: (1) BCNR File No. 05662-00

1. Per reference (a), enclosure (1) is returned with the recommendation again that [REDACTED]'s petition be denied. He is requesting removal of his second failure of selection for promotion to lieutenant commander. [REDACTED] rebuts our original opinion stating that he should have been screened and transferred to Standby Reserve-Inactive (USNR-S2) status by the 19 May 1999 Naval Reserve Officer Mobilization Disposition Board. He further states that this action would have made him ineligible for consideration before the FY-00 Inactive Duty Line Lieutenant Commander Selection Board held in June 1999, which would have precluded his second failure of selection for promotion.

2. In screening [REDACTED] record for placement before the 1999 Mobilization Disposition Board, we noted the following:

a. He had not actively participated at a minimum level for approximately five years.

b. He had replied in writing to our 1997 notification of our intent to place him before a board due to non-participation that he intended to actively participate in the Naval Reserve.

c. He had failed of selection for promotion to lieutenant commander once. If he failed of selection for promotion to commander a second time, 10 USC 14506 would require his discharge because he was not retirement eligible.

3. Per SECNAVINST 1920.6A the Mobilization Disposition Board was authorized to recommend transfer to USNR-S2 Status or discharge [REDACTED] case. Placement before this board would not necessarily have precluded his separation. Also, even if he had been placed before the 1999 Mobilization Disposition Board no action regarding [REDACTED], including transfer to USNR-S2 status or separation would have been effected until the

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Board was approved by the Secretary of the Navy. The Secretary of the Navy approved the Mobilization Disposition Board on 26 July 1999. The FY-00 Inactive Duty Lieutenant Commander Selection Board convened on 14 June 1999 and adjourned on 22 June 1999, approximately one month before the Mobilization Disposition Board was approved. This means that [REDACTED] would have been a Ready Reservist and would have been considered by the FY-00 Inactive Duty Line Lieutenant Commander Selection Board even if we had placed him before the Mobilization Disposition Board. He would have still been considered for promotion and we would have held in abeyance any action regarding [REDACTED]'s status pending promotion board approval. Also, as noted above, M [REDACTED] indicated that he wanted to remain a Ready Reservist and desired to actively participate. He signed a Ready Reserve agreement in August 1999 and began drilling in September 1999. It is obvious that [REDACTED] did not desire to be placed in Standby Reserve S-2 status. Because of the above facts we found no compelling reason to place [REDACTED] before the 1999 Mobilization Disposition Board.

4. It is important that officers on Inactive Duty actively participate in the Naval Reserve Program early in their career to be competitive for promotion. Gaps in an officer's active participation that exceed four years can significantly reduce an officer's competitiveness for promotion. Also it will result in the discharge of the officer before reaching retirement eligibility if the officer has no prior enlisted service and fails to promote to lieutenant commander or to commander. It is for this reason that we contacted [REDACTED] in 1997 urging him to actively participate.

5. We regret a more favorable response cannot be given in this instance. My point of contact is [REDACTED] PERS-91B, at [REDACTED]

[REDACTED]

Director, Naval Reserve Personnel
Administration Division



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

5062-00

5420
PERS-86
NOV -7 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LIEUTENANT [REDACTED]

Encl: (1) BCNR File 05662-00 w/Service Record

1. We are returning enclosure (1) with the following observations and recommendation that Lieutenant [REDACTED] petition be denied.
2. We are in agreement with the PERS-9 advisory opinion that Lieutenant [REDACTED] had ample opportunity to determine his promotion liability and status, and to take action in his best interest. Lieutenant [REDACTED] provides no substantiation of his claims that he was improperly briefed by naval personnel. Had Lieutenant [REDACTED] Failure of Selection been set aside and made eligible for the FY-01 Naval Reserve Lieutenant Commander selection board, his lack of participation during the previous five years would have made him non-competitive with his peers. Our opinion remains that Lieutenant [REDACTED] had the experience, knowledge, ability and significant opportunity to exercise due diligence to protect his commission, and that the current situation is merely a result of his decisions to pursue other interests. We find no injustice in this situation and accordingly, no basis for relief.

[REDACTED]

Director, Reserve Officer
Promotions, Appointments, and
Enlisted Advancement Division