



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

HD:hd
Docket No: 06189-00
4 December 2001

CAPT [REDACTED] MC USN
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested that your failure of selection by the Fiscal Year (FY) 99 Active Medical Corps Captain Selection Board be removed, and that your captain date of rank and effective date be adjusted to reflect selection by the FY 94 Active Medical Corps Captain Selection Board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 November 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 application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command, dated 22 November 2000, 15 February and 11 June 2001, and the Medical Corps Officer Community Manager dated 26 April 2001, copies of which are attached. The Board also considered your counsel's letters dated 17 April and 18 September 2001.

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 duly noted the substantial evidence indicating that one member of the FY 99 promotion board had knowledge of information, specifically, fitness reports and failures of selection for promotion, whose removal from your service record had been ordered by the Principal Deputy Assistant Secretary of the Navy (Manpower and Reserve Affairs). They further noted the evidence, in the affidavit of Captain D--- dated 9 August 2000, that this member expressed an opinion, before the FY 99 promotion board convened on 23 February 1998, that he was "highly skeptical" of the merits of your application for the relief eventually approved by the Principal Deputy Assistant Secretary. However, this

evidence, by itself, did not establish that the member in question could not be impartial in considering you; or that the member considered, in his deliberations, the information of which he had knowledge concerning material whose removal from your record had been directed. They found that the member's knowledge of this information did not violate the Principal Deputy Assistant Secretary's order, as it relates to selection boards. Finally, they did not find the member's knowledge of this information violated the provisions of title 10, United States Code, section 615(a)(2) as to what information about an eligible officer may be "furnished to a selection board."

In view of the above, your application has been denied. 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

Enclosures

Copy to:
Mr. Benjamin L. Willey



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

4189-00

1610
PERS-311
22 November 2000

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

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: CAPT [REDACTED], USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) Memo from Principal Deputy Assistant Secretary of the Navy of 10 February 1997

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness reports for the period 11 August 1992 to 18 June 1993 and 1 September 1993 to 31 May 1994.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record did not reveal the fitness reports in question to be on file.

b. Reference (b) authorized the removal of the fitness reports in question. The fitness reports were replaced by PERS-313D with a SECNAV memorandum dated 25 April 1997 and were placed in the member's digitized record on 14 October 1997. Liaison with Selection Board Support indicated the FY-99 Captain (active 0-6 staff) selection board convened 23 February 1998 and adjourned 26 February 1998.

[REDACTED]
Head, Performance
Evaluation Branch



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

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Pers 85
15 Feb 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: CAPT [REDACTED] USN, [REDACTED]

Ref: (a) Pers-311 memo of 22 Nov 00

Encl: (1) BCNR File

1. Enclosure (1) is returned concurring with the findings and recommendations of ref (a) and recommending disapproval of CAPT [REDACTED] request of a FY-94 backdate for the rank of Captain.

2. A review of the member's record before the FY-99 Captain (Active) Staff promotion board revealed the fitness reports in question were replaced with SECNAV memorandum dated 25 April 1997. The fitness reports were not reviewed by the board, therefore, [REDACTED] record was considered complete and presented a substantially accurate and fair portrayal of his Naval career.

3. It is reasonable to consider the member's promotion to Captain during the FY-00 was due to additional professional experience and qualifications, thereby presenting a more competitive record. Recommend disapproval of the requested backdate to the rank of Captain for FY-94.

[REDACTED]
BCNR Liaison, Officer Promotions
And Enlisted Advancements Division



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

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Pers 85
11 Jun 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: CAP [REDACTED] USN, [REDACTED]

1. This Advisory Opinion is submitted in response to request by BCNR for comment on the application of [REDACTED] to receive a backdated date of rank commensurate with selection by the FY-94 Active O-6 Staff (Medical Corps) Promotion Selection Board.
2. PERS-85 Advisory Opinion is that [REDACTED] validly failed of selection (FOS) on the FY-99 Active O-6 Staff (Medical Corps) Promotion Selection Board and thus should retain the 1 October 2000 date of rank he earned by virtue of his selection for promotion by the FY-00 Active O-6 Staff (Medical Corps) Promotion Selection Board.
3. [REDACTED] argues that the FY-99 board, which did not recommend him for promotion, was tainted by the assignment of [REDACTED] as a voting member of that board. He incorrectly argues that the Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN(M&RA)) memorandum of 10 February 1997 (as amended 10 April 1997) ordered that no person with "direct personal knowledge" of [REDACTED] two adverse fitness reports or related BCNR actions be a member of a selection board considering [REDACTED]. He argues that because [REDACTED] while in the performance of his duties two years prior to the FY-99 board, had reviewed [REDACTED] BCNR file, [REDACTED] was not eligible to be a member of any board considering [REDACTED] for promotion.
4. The ASN (M&RA) memorandum does not support [REDACTED] argument. The ASN(M&RA) memorandum does not restrict, even by implication, the membership of future selection boards. The memorandum directed that two contested officer fitness reports be removed. It also directed that the removed officer fitness reports be replaced with a memorandum stating that the officer fitness reports "may not be made available to selection boards and other reviewing authorities; and that such boards may not

conjecture or draw any inference as to the nature of the report." These actions were completed.

5. The Secretary of the Navy has no obligation to survey all selected or contemplated promotion board members to determine the extent of their prior knowledge of any person on the board-eligible list. The probability that a board member might have prior knowledge of some person appearing before the board is commonly understood, accepted, and addressed in the rules governing selection boards. Particularly in smaller officer communities, it is common for board members to know individuals or to even have personally written officer fitness reports on promotion candidates appearing before the board. Because of this, selection boards have a variety of instructions and processes to ensure that only authorized information is considered. Secretary of the Navy Instruction 1420.1A provides:

"Any board member who believes that he or she cannot in good conscience perform his or her duties as a member of the board without prejudice or partiality has a duty to request relief by SECNAV from such duty. Such a request will be honored."

This language is also contained in the selection board's precept. This passage tells board members that they must request relief if they feel they are unable to execute their board duties without prejudice or partiality. The board is specifically instructed in the precept (appendix A, para 2d) about how to handle a record from which information has been removed at the direction of ASN(M&RA):

"When discussing your own personal knowledge concerning the professional qualifications of eligible officers, the board is reminded that if personal remarks, based on a member's personal knowledge, could be considered adverse, the member cannot discuss his personal knowledge or evaluation unless such matter is contained in the officer's record or other material placed before the board in compliance with the law and Service regulation. In addition, should an officer's record reveal the removal of a fitness report via the Board for Correction of Naval Records, etc., the member may not discuss his personal knowledge regarding the circumstances which resulted in the removal of the report from the officer's record."

6. Selection board deliberations are secret, however, recorders and/or other administrative assistants are present at all board proceedings. All of the board members and all of the administrative assistants take an oath to follow the precept. All board members sign a document at the completion of the board

certifying that they complied with the precept and instructions provided by the Secretary of the Navy.

7. During the FY99 O-6 Active Staff Board, all of the selection board members took the required oath, which indicates an understanding of the precept and a solemn promise to follow the precept. After the board, all of the members signed the certification indicating that they had complied with the precept. No board member or administrative support personnel have alleged any impropriety in the board proceedings or precept violations. If [REDACTED] has evidence indicating that [REDACTED] or any other selection board member, did not fulfill this obligation, he has not presented it in his petition. If he has no such evidence, he has baselessly impugned the integrity of [REDACTED] and the other members of this board.

8. PERS-85 recommends BCNR disapprove the application by CAPT [REDACTED] to backdate his date of rank for the grade of captain.

[REDACTED]

Captain, USN
Active Officer Promotions,
Appointments And Enlisted
Advancements Division (PERS-85)

26 APR 01

MEMO FOR BCNR COORDINATOR (PERS-OOZCB)

From: [REDACTED] MSC, USN, Medical Corps Officer
Community Manager (N131M4)

Via: [REDACTED] NC, USN, Head, Medical Officer
Community Manager (N131M4) ^{28 APR 01}

Subj: ADVISORY OPINION ICO CAPT [REDACTED]
[REDACTED]

1. The basis for this request for backdating CAPT [REDACTED] DOR to 1994, seems to hinge on whether the 1999 board was unduly influenced by one board member who had extensive knowledge of issues that had been ordered expunged from his records.
2. There were six voting members of this board, including the President. The vote of one member does not make or break an officer during the board process. Decisions are made on how all voting members score a potential candidate. [REDACTED] non-selection only indicates that when the scores from all board members were tallied his score fell below the cut-off.
3. Board members are counseled that their deliberations are based on the records before them, to include any letters from the candidate. Anything not verifiable in the records at hand is not to be part of the deliberations. To bring anything from outside the records, into the deliberations violates the precept and could constitute misconduct and render the decisions of the Board invalid.
4. If the Board Member in question did discuss his knowledge of information not in the record, and the President of the Board allowed it to be used in the deliberations, then not only does [REDACTED] have cause to contest the outcome, but so do all other candidates that were before the board. All board members, including its president, would have to be held liable for violation of the precept.
5. There is no evidence that any violation of the precept occurred. The idea of finding six senior medical officers that have no prior knowledge of any of the candidates being presented is ludicrous to the extreme. The presence of an

officer with prior knowledge about a candidate is not cause for setting aside the decisions of the board.

6. Recommend that this request be denied. There is no evidence in any of the documentation that one board member inappropriately influenced the scoring of the other board members. In fact the President of the Board and the Senior Recorder have both signed affidavits to that effect when the board reported out.

