



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

HD:hd
Docket No: 08250-98
6 December 2001

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

Subj: CAP [REDACTED] DC, USN [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 15 Oct 98 w/attachments
(2) BUMED ltr dtd 10 Feb 00
(3) Subject's counsel's ltr dtd 23 Oct 00 w/enclosures
(4) PERS-85 memos dtd 23 Apr 99, 6 Dec 00 and 27 Nov 01
(5) Memo for the Record dtd 3 Apr 01
(6) 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 to show his date of rank in the grade of lieutenant as 19 August 1976 vice 20 May 1972.

2. The Board, consisting of Messrs. Kastner, Schultz and Taylor, reviewed Petitioner's allegations of error and injustice on 6 December 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. In correspondence attached as enclosure (2), the Chief, Bureau of Medicine and Surgery (BUMED) recommended no relief. They stated that Petitioner's lieutenant date of rank was correctly established in accordance with the entry grade credit guidance in Secretary of the Navy Instruction 1421.5A.

c. Petitioner's counsel's rebuttal, enclosure (3), did not contend any error in the establishment of Petitioner's lieutenant date of rank, but argued that it is unjust because

Petitioner was never advised he would face statutory retirement in fiscal year 2003; and he actually received no benefit from the entry grade credit he was given. Counsel insisted that Petitioner's lieutenant date of rank should be corrected as requested, to allow him to complete 30 years of service in fiscal year 2007. He contended that with Petitioner's senior date of rank, he should have been immediately eligible for promotion board consideration on commissioning in 1980; however he was not considered until 1982, when the Fiscal Year (FY) 83 Dental Corps Lieutenant Commander Selection Board convened. Accordingly, counsel requested, in the event Petitioner's lieutenant date of rank is not adjusted as requested, that his record be corrected to reflect his promotions to lieutenant commander in 1975, vice 1983; commander in 1981, vice 1989; and captain in 1987, vice 1995.

d. Enclosure (4) comprises three opinions from PERS-85, the Navy Personnel Command (NPC) office with cognizance over officer promotions. The first, dated 23 April 1999, merely recommended that comment be obtained from BUMED which, as indicated in paragraph 3.b above, was done. In their second opinion, dated 6 December 2000, they commented to the effect that Petitioner's request to adjust his lieutenant date of rank has merit and warrants favorable action. They agreed with his counsel's contention that he received "no tangible benefit" from his entry grade credit. Their last opinion, dated 27 November 2001, stated that while there is no evidence to determine if Petitioner should have been considered by the FY 82 Dental Corps Lieutenant Commander Selection Board, the first promotion board to meet after he had entered active duty, his current lieutenant date of rank would have made him senior to the senior eligible for that board.

e. The memorandum for the record at enclosure (5) documents that in a phone conversation between Petitioner's counsel and a member of the Board's staff, counsel indicated he was in complete agreement with the second PERS-85 opinion, dated 6 December 2000.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the BUMED opinion at enclosure (2), and especially in light of the contents of the PERS-85 opinions dated 6 December 2000 and 27 November 2001 at enclosure (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank in the grade of lieutenant as 19 August 1976, vice 20 May 1972.

b. That any material or entries inconsistent with 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 a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

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
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.

W. Dean Pfeiffer
W. DEAN PFEIFFER
Executive Director