



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

HD:hd
Docket No: 03301-01
15 February 2002

LCDR [REDACTED] CHC USNR
[REDACTED]
[REDACTED]

Dear Commande [REDACTED]

This is in reference to your application dated 20 April 2001 for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552, seeking removal of your failures of selection by the Fiscal Year (FY) 97 and 98 Lieutenant Commander Staff Selection Boards, and reinstatement to active duty as a lieutenant from 2 April 1998 to 30 September 1999 and as a lieutenant commander from 1 October 1999 forward. Your previous case, docket number 1721-98, in which you requested special selection board consideration for the FY 97 Lieutenant Commander Staff Selection Board and action to set aside your release from active duty on 1 April 1998, was denied on 30 July 1998.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 14 February 2002. 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 current application, 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 Executive Assistant to the Chief of Chaplains dated 18 July 2001 and the Navy Personnel Command dated 14 September and 18 December 2001, copies of which are attached.

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. In this connection, they substantially concurred with the comments contained in the advisory opinions. They found the errors in your case, including the failure to correct properly the records of the FY 95 and 96 Lieutenant Commander Staff Selection Boards, did not deny you fair consideration for promotion by the FY 97 and 98 Lieutenant Commander Staff Selection Boards, nor did they preclude you from communicating with the FY 97 Lieutenant Commander Staff Selection Board. Further, they noted that you made no showing as to what communication you might have submitted, or what impact it might have had on

your chances for selection. They duly noted the conclusions, in the Naval Inspector General letter of 6 February 2001, that it was "not fair" to adjust your lineal number just before the FY 97 promotion board convened, and that "your decision not to contact the board may have been influenced by the incorrect verbal information you were provided." However, these conclusions do not require this Board to find you should be granted the relief you seek. 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



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

IN REPLY REFER TO

5420
Ser N1G2T/01179
18 Jul 01

MEMORANDUM FOR BCNR COORDINATOR (PERS-00ZCB)

Subj: REQUEST FOR ADVISORY OPINION ICQ [REDACTED]

Ref: (a) IG ltr 19990939 Ser N561/0245 of 6 Feb 01

1. The following comments are submitted as requested:

a. The Chief of Chaplains agrees with the findings of reference (a), which addresses Chaplain Corps promotion policy of reservists recalled to active duty. Recalled reservists have and are being promoted by active duty selection boards.

b. The Chief of Chaplains agrees with the findings of the IG that failure of vacating the Failure of Selection had no effect on the FY97 O-4 Chaplain Corps Selection Board. The Chaplain Corps has a history of above zone selects for all grades. The FY97 O-4 board had 3 above zone selects; the FY98 O-4 Board had 3 above zone selects.

c. Although the IG found that BUPERS violated Title 10 of the U.S. Code, Section 614, and SECNAVINST 1420.1A, the IG in a later paragraph stated that there was no evidence to support the allegation that Chaplain [REDACTED] was in any way precluded from communicating with the board.

d. Despite the administrative and procedural errors that occurred, it is believed that Chaplain [REDACTED] was not deprived of fair and impartial consideration by the FY97 and FY98 O-4 Selection Boards.

e. The need for Chaplain [REDACTED] to have a special board is unclear. Chaplain [REDACTED] already a Lieutenant Commander.

2. It is recommended that Chaplain [REDACTED] request be disapproved.

[REDACTED]

Captain, CHC, U.S. Navy
Executive Assistant to the
Chief of Chaplains



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

5420
Ser P80B/1
SEP 14 2001

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
LCDR [REDACTED] USNR, [REDACTED]

Encl: (1) BCNR File 03301-01

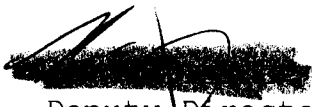
1. We are returning enclosure (1) with the recommendation that
LCDR [REDACTED] petition be denied.

2. The petitioner has not presented any information which
provides a basis on which to recommend removal of the failures of
select or convene a special board. We concur completely with the
opinions offered by the Chief of Chaplains office in their
memorandum dated 18 July 2001. [REDACTED] references SECNAVINST
1401.1A.7.c; this instruction was cancelled and replaced by
1401.1B on 25 April 1997 but it reads essentially the same. He
quotes the portion which defines what a material error is, "any
error of fact or administrative/procedural error that is more
likely than not to have deprived the officer concerned of a fair
and impartial consideration by the board is a material error."
We do note the Inspector General's report mentions an error
concerning [REDACTED]'s date of rank. It is also our opinion
however, that although an error was made, it did not deprive him
of fair and impartial consideration. He was obviously aware that
the board would be looking at him for promotion, even if below
zone, and choose not to submit a letter to the board.
[REDACTED] record was substantially complete before the board.

3. Specific reasons for [REDACTED]'s failure to select while
on active duty are not available since proceedings of selection
boards are sensitive in nature and records of deliberations are
not kept. It is our opinion that [REDACTED] record was
viewed in its entirety, and was simply not competitive enough,
when considered within the numerical constraints placed on the
board.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
LCDR [REDACTED] USNR, [REDACTED]

4. LCDR [REDACTED] can be justifiably proud of his record and years of contributions; the negative response to his petition does not detract from his honorable service to this nation and the United States Navy.



Deputy Director, Active and Reserve Officers Career Progression Division



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

5420
 Pers 85
 18 Dec 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
 NAVAL RECORDS

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO
 LCDR [REDACTED] CHC, USN [REDACTED]

Ref: (a) BCNR Docket No. 01333-95
 (b) CNP Ltr 1070 Pers-324/22/30 of 27 Mar 96
 (c) BCNR Docket No. 01721-98

Encl: (1) BCNR File 03301-01

1. Enclosure (1) is returned, recommending that LCDR [REDACTED] petition for relief be denied.

2. LCDR [REDACTED] request for vacating his failure of selection from the FY-97 and FY-98 Lieutenant Commander Chaplain Cops Selection Boards is without merit. In references (a) and (b) [REDACTED] was formally notified that he would go before the FY-97 Lieutenant Commander Chaplain Corps selection board which met on 6 May 1996 as an in-zone officer. Irregardless of whether [REDACTED] was initially told by PERS-26 that his corrected lineal number would put him in the below zone category or was subsequently changed to put him in zone in accordance with the record corrections directed by reference (a), [REDACTED] had adequate written notice by BCNR and BUPERS that he would be considered by the FY-97 selection board. [REDACTED] provides no additional proof that his record was unfairly disadvantaged during consideration by the FY-97 board due to the internal administrative actions taken to comply with reference (a).

3. It is our opinion that despite the administrative errors and poor communication [REDACTED] knew that the November 1, 1995, changes to his date of rank and lineal number would place him in zone for consideration and he had ample notice of such. We concur with BCNR's findings contained in reference (c) and feel that [REDACTED] record was given

fair and impartial consideration before the FY-97 selection board. Furthermore, we concur with the opinions of PERS-86 and PERS-00ZCB that no injustice was done to [REDACTED] and that no additional relief is warranted at this time.

[REDACTED]
BCNR Liaison, Active and
Reserve Officer Career Progression
Division