



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

HD:hd
Docket No: 06116-02
4 November 2002

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

Subj:

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

Encl: (1) DD Form 149 dtd 2 Jul 02 w/attachments
(2) PERS-80 memo dtd 27 Aug 02
(3) DCNO N131Y memo dtd 7 Oct 02
(4) Pers-8023 e-mail dtd 17 Oct 02
(5) Memo for record dtd 21 Oct 02
(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 the acceptance date of his commissioning as a lieutenant commander, U. S. Navy as 1 February 2002, vice 20 June 2002. He further requested removal of his failure of selection for promotion before the Fiscal Year (FY) 03 Line Commander Selection Board. This was his second failure of selection for promotion to commander.
2. The Board, consisting of _____ reviewed Petitioner's allegations of error and injustice on 24 October 2002, 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. The FY 03 Line Commander Selection Board convened on 19 February 2002. Petitioner failed of selection by this promotion board. The FY 03 Supply Corps (SC) Commander Selection Board convened on 11 March 2002. He was not considered, as he was not commissioned as an SC officer until after this promotion board had convened.

c. Title 10, United States Code, section 628(a)(1) mandates that a special selection board be convened to consider a person who should have been considered by a regular officer promotion selection board, but was not considered because of an administrative error. Section 628(a)(3) provides that if the special selection board convened under section 628(a)(1) does not select the person for a grade below flag officer grade, the person shall be considered to have failed of selection for promotion.

d. In correspondence attached as enclosure (2), PERS-80, the Navy Personnel Command (NPC) office having cognizance over officer promotions, commented to the effect that Petitioner's request should be denied.

e. In correspondence attached as enclosure (3), N131Y, the Deputy, Chief of Naval Operations office having cognizance over the human resources officer community, with special expertise concerning the circumstances of Petitioner's transition from line to staff, has commented to the effect that his request should be approved.

f. In e-mail attached as enclosure (4), NPC Code Pers-8023, having reviewed the N131Y opinion, concurred with the recommendation to remove Petitioner's failure of selection by the FY 03 line board. They recommended against a special board for the FY 03 SC board Petitioner missed, as they felt this would result in a failure of selection.

g. The memorandum for the record at enclosure (5) documents that a representative of the Bureau of Naval Personnel (N131F2) assured that action by this Board correcting Petitioner's record to show commissioning as an SC officer on 1 February 2002 would not cause cognizant Navy authorities to place the officer, without the officer's consent, before a special selection board for the FY 03 SC Commander Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the favorable advisory opinions, the Board finds an injustice warranting the requested relief.

The Board concludes it is not mandatory, under title 10, United States Code, section 628(a)(1), for Petitioner to have a special selection board for the FY 03 SC Commander Selection Board. In this regard, they note he was, in reality, still a line officer when this promotion board met, so he was correctly not considered by this board.

The Board recognizes they could grant Petitioner a special selection board for the FY 03 SC Commander Selection Board on the basis of the corrected record, reflecting he became an SC officer before the convening of this promotion board, which did not consider him. However, they do not feel this would be remedial, as Petitioner did not request it; and NPC has advised that if he were considered by such a special selection board, a failure of selection might well result, which would effectively negate the benefit of removing his failure by the FY 03 Line Commander Selection Board.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show the acceptance date of his commissioning as a lieutenant commander, SC, U. S. Navy as 1 February 2002, vice 20 June 2002.

b. That Petitioner's record be corrected further to show that he did not fail of selection by the FY 03 Line Commander Selection Board.

c. That any discharge or other action based in any way on Petitioner's having twice failed of selection for promotion to commander be cancelled.

d. That any material or entries inconsistent with or relating to 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.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

Robert D. Zsalmann
For W. DEAN PFEIFFER
Executive Director

