



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

HD:hd
Docket No: 09826-02
7 October 2003

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

Subj: LCDR S [REDACTED], USNR, [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 30 Sep 02 w/attachment
(2) PERS-80 memo dtd 4 Feb 03
(3) Subject's fax ltr dtd 15 Aug 03
(4) Pers-911 memo dtd 16 Sep 03
(5) 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 by removing his failure of selection for promotion before the Fiscal Year (FY) 03 Naval Reserve Line Commander Selection Board. After he applied, he also failed of selection by the FY 04 Naval Reserve Line Commander Selection Board. It is presumed he also desires removal of that failure, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Mses. Gilbert and Schnittman and Mr. Pfeiffer, reviewed Petitioner's allegations of error and injustice on 2 October 2003, 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. Petitioner was removed from the Inactive Status List (ISL) and restored to active status in the Ready Reserve effective 23 February 2001. He was eligible to be considered by the FY 03 Naval Reserve Line Commander Selection Board, as this promotion board met on 25 February 2002, over a year after his removal from the ISL. In his application he

contended, in effect, that he was unable to compete fairly before the FY 03 promotion board, because he had not been participating, since his removal from the ISL, as a result of processing to evaluate his physical qualification for service.

c. In correspondence attached as enclosure (2), PERS-80, the Navy Personnel Command (NPC) office having cognizance over active and reserve officer career progression matters, has recommended that Petitioner's request to remove his failure of selection by the FY 03 Naval Reserve Line Commander Selection Board be disapproved. They conceded that he "was not medically qualified and unable to drill from 23 FEB 01 until APR 02." However, they noted that his status in the Naval Reserve made him eligible to be considered by the FY 03 Naval Reserve Line Commander Selection Board.

d. Enclosure (3) is Petitioner's rebuttal to the PERS-80 advisory opinion. In this rebuttal, he argued that he should not have been put before the FY 03 promotion board, as he should not have been removed from the ISL until early 2002, when he was medically cleared.

e. In correspondence attached as enclosure (4), Pers-911, the NPC office having cognizance over Naval Reserve personnel administration, has commented to the effect that both of Petitioner's failures of selection should be removed. They concluded that his return to active status should have been delayed, in accordance with their policy, until certification of his medical qualification. They additionally concluded that had this change of status been delayed as it should have been, he would not have been eligible to be considered by either the FY 03 or the FY 04 promotion board, so both failures of selection should be removed. Finally, they also recommended that Petitioner's naval record be corrected further to show he was removed from the ISL on 27 March 2002, when NPC accepted his Ready Reserve agreement, rather than 23 February 2001.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting removal of Petitioner's failures of selection before the FY 03 and 04 Naval Reserve Line Commander Selection Boards. They do not agree with the Pers-911 recommendation to correct his record further to show he was removed from the ISL on 27 March 2002, rather than 23 February 2001, because he did not request this, it would not be remedial, and it would not be necessary in order to remove his failures of selection for promotion. In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

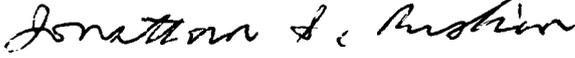
a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

b. 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.

c. 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
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
Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-80
04 FEB 2003

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 09826-02

1. Forwarded, recommending disapproval.
2. LCDR [REDACTED] was not medically qualified and unable to drill from 23 FEB 01 until APR 02. However, his status in the Naval Reserve was correct as he went before the FY-03 Reserve Commander Line Selection Board.
3. Therefore recommend that his request to remove his failure of selection for the FY-03 Reserve Commander Line Selection Board be disapproved.

[REDACTED]

Director, Active and Reserve
Officer Career Progression
Division



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

IN REPLY REFER TO
5420
Pers-911
16 Sep 03

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

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

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

Encl: (1) BCNR memo 5420 Pers-00ZCB of 10 Sep 03

1. Enclosure (1) is returned with the following comments and recommendations concerning LCDR [REDACTED]'s petition to have his first failure of selection for Commander removed.

2. LCDR [REDACTED] joined the Naval Reserve in 1995 after serving 12 years on Active Duty. He was later transferred to the Inactive Status List in 1999 for reasons of inactivity in the Naval Reserve program. On 22 February 2001, per his request, we transferred LCDR [REDACTED] back to an active status, in order to participate in the Selected Reserve program. Later in April 2001, the Chief, Bureau of Medicine and Surgery, determined that he did not meet established physical standards for affiliation. In June 2001, LCDR [REDACTED] requested a review of his medical record for determination of physical qualification by the Physical Evaluation Board. That board determined in February 2002 that he was physically qualified for military service. It was only after 27 March 2002 that we accepted another Ready Reserve Agreement, which allowed [REDACTED] to drill.

3. In our judgment, the delay in the final determination of LCDR [REDACTED]'s physical qualification precluded his timely participation in the Naval Reserve program, and placed him at an unfair disadvantage among his peers for the FY-03 Commander Selection Board, which resulted in his not being selected for promotion. Had we delayed his transfer back to the Ready Reserve until certification of his medical qualification, as is our policy, [REDACTED] would not have been eligible for promotional consideration before the FY-03 or the FY-04 selection boards. For that reason, we support [REDACTED]'s petition and recommend even further relief by recommending removal of both failures of selection for promotion.

4. To accomplish this correction, we recommend that the Board approve a Ready Reserve transfer date of 27 March 2002 vice 22 February 2001 and the removal of both failures of selection for promotion.

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

5. If you have questions concerning this matter, please contact
me at [REDACTED]

[REDACTED]
Deputy Director, Naval Reserve
Personnel Administration Division