



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

LCC  
Docket No. 9142-07

SEP 29 2008

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

Subj: REVIEW OF NAVAL RECORD ICO  
[REDACTED]

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

Encl: (1) DD Form 149 w/attachments  
(2) NPC memo 1811 PERS-822 of 11 Sep 08  
(3) 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 Petitioner was transferred to the Retired List in paygrade 0-4.

2. The Board, consisting of Messrs. George, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 29 September 2008 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 office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

#### CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting corrective action based on the following.

Petitioner received a Spot Promotion to pay grade 0-4 (Lieutenant Commander) in April 1996. He retired in pay grade 0-4 on

1 October 1998. His retired pay was erroneously computed based on the retired pay of an 0-3 (Lieutenant) vice 0-4 (Lieutenant Commander) commencing 1 October 1998. In approximately May 2007, the Defense Finance and Accounting Service administratively corrected his retired record from 0-3 (Lieutenant) to 0-4 (Lieutenant Commander) and paid him the additional retired pay due for the six prior years (due to the Barring Act). However, the payment was not retroactive to 1 October 1998. In general, the Board was of the opinion that in a case where the Petitioner was actually retired in the higher pay grade that he should receive the back pay in the higher pay grade. The Board carefully considered DFAS's interpretation and application of the six year limitation on claims against the government. However, rather than mechanically applying the limitation, the Board concludes that the six year limitation is intended to protect the government from being burdened with the obligation to keep records which would be required to adjudicate claims beyond a six year period. Here, the Board concludes, the records still exist which show that the Petitioner's retired pay should have been based on the rank of 0-4. After a careful review of all the evidence, the Board unanimously concludes that the record should be changed to show that Petitioner made a timely claim for his retirement pay to be computed based on pay grade 0-4.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. On 1 October 1998 the Petitioner submitted a letter to the Naval Personnel Command requesting that his retirement pay be based on paygrade "0-4" vice "0-3". On 1 October 1998, NPC PERS 822 approved the request and submitted the documents to DFAS-Cleveland showing the Petitioner's retirement pay would be based on pay grade "0-4" vice "0-3" effective 1 October 1998.

b. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

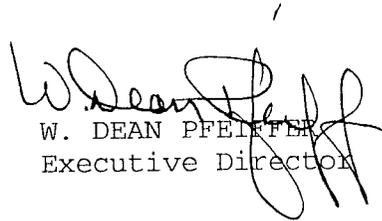
4. It is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
WILLIAM J. HESS, III  
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.

29 September 2008

  
W. DEAN PFEIFFER  
Executive Director