



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

MEH
Doc. No. 4829-08
19 August 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) CNRC memo 1133 Ser 32/ of 10 Jul 08
(3) Subject's naval record (CD and printed excerpts)

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 that he enlisted in paygrade E-2, vice E-1, based on college credits.

2. The Board, consisting of Messrs. George, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 28 July 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. Petitioner entered the Delayed Entry Program (DEP) on 12 June 2007 and shipped to active duty on 26 September 2007 (106 days).

c. He signed and executed an enlistment contract enlisting him in pay grade E-1 but alleges he should have been enlisted in paygrade E-2 based on college credits earned prior to signing his contract.

d. COMNAVCRUITCOMINST 1130.8G establishes criteria for enlistment in an advanced paygrade. Personnel with the requisite number of qualifying college credits to meet the advanced paygrade criteria must present official transcripts prior to ship date.

e. On 12 June 2007, prior to enlisting, Petitioner completed block 12 of the DD Form 1966/1 (Record of Military Processing) indicating that his highest grade of education completed was "12L" (High School Diploma Graduate). In block 22a (Education) of the DD Form 1966/2 he listed that from "2007/1 to Pres" he was attending "Miami University - Hamilton," but had not graduated. The recruiter noted on the DD Form 1966/4 that Petitioner's official high school transcripts had been sighted. No entry was made regarding college transcripts.

f. On 26 September 2007, Petitioner signed an Advanced Paygrade Enlistment Statement of Understanding indicating he had read the Navy's advanced paygrade eligibility requirements and understood what was required to be advanced to a higher paygrade while in the DEP. He indicated that he was "NOT eligible for Advanced Paygrade."

g. In May 2008, Petitioner filed the instant application seeking a change to his enlistment contract to show that he enlisted in pay grade E-2 vice E-1. To support his application, he submitted official college transcripts showing that between December 2005 and April 2007, prior to his enlistment, he had earned 35 hours of college credit at Miami University and Morehead State University.

h. Review of the transcripts shows that he had earned 3 hours College Credit at Miami University by December 2005. By April 2006, he had earned another 3 hours of credit, also from Miami University. By December 2006, he had earned another 16 hours of credit from Morehead State University. By April 2007, he had earned another 13 hours of credit from Miami University. Notably, Petitioner did not list Morehead State University at all on his DD Form 1966/2. And there is no evidence that he

proffered transcripts from either of these colleges prior to his entry into the DEP on 12 June 2007.

i. The official transcripts that Petitioner submitted from Miami University are dated 6 December 2007, more than 2 months after Petitioner shipped to active duty. Official transcripts from Morehead State University are dated 29 November 2007, more than 2 months after he had shipped to active duty.

j. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has recommended the request be denied, noting that college transcripts were not provided prior to ship date as required by the existing policy and governing instructions. Additionally, there were no entries listed in the remarks section of the DD Form 1966/4 other than the sighting of the high school transcripts. Also, Petitioner signed the Advanced Paygrade Enlistment Statement of Understanding indicating he was "NOT eligible for Advanced Paygrade."

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (2), the majority concludes by 2 to 1 vote that Petitioner's request warrants favorable action. In the majority's view, a prospective recruit, with qualifying college credit, would not knowingly enlist in pay grade E-1 if in fact he fully understood that he was eligible for enlistment in an advanced pay grade based on that college credit. The majority is of the opinion that because Petitioner had actually earned college credit before enlisting, he should receive an advanced pay grade at enlistment for that college credit notwithstanding the evidence that transcripts were not provided and that complete information about such college credit was omitted from his enlistment application and his enlistment contract.

MAJORITY RECOMMENDATION:

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

a. He enlisted in paygrade E-2, vice E-1, effective 26 September 2007 (Active Duty Service Date). He met the criteria for advanced paygrade based on college credits.

MINORITY CONCLUSION:

A minority of the Board (Mr. Pfeiffer) concludes that no relief is warranted. The minority finds that it was incumbent on the Petitioner to disclose his complete college credits and provide college transcripts in accordance with the established policy. This is especially true in this case because Petitioner had completed all of his education well before he entered the DEP and thereafter spent another 106 days in the DEP. This provided him with adequate opportunity to obtain and submit transcripts. Moreover, Petitioner had omitted complete information about his college credits from his enlistment application and he signed the Advanced Paygrade Enlistment Statement of Understanding indicating he was "NOT eligible for Advanced Paygrade." In the minority's view, Petitioner failed to fully disclose and document his earned college credit in spite of an adequate opportunity to do so. He subsequently executed a contract enlisting in pay grade E-1 and such contract should be binding upon him.

MINORITY RECOMMENDATION:

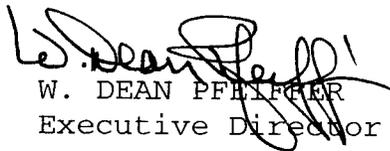
That Petitioner's request be denied.

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 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.

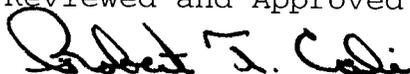
ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and Approved



8-26-08

Robert T. Call
Assistant General Counsel
(Manpower and Reserve Affairs)