



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

BJG
Docket No: 6937-08
15 April 2009

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

Subj: ~~REDACTED~~
REVIEW OF NAVAL RECORD (RECONSIDERATION)

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

- Encl: (1) BCNR file, docket numbers 5817-03 (Subject's last previous case) and 5214-98 (Subject's initial case), incl Subject's naval record
(2) AGC (M&RA) memo dtd 11 Jul 08 w/encl (Subject's ltr dtd 5 Jun 08 w/encls)
(3) AGC (M&RA) ltr dtd 9 Oct 08
(4) BCNR rpt to SECNAV HD:hd Docket No: 05817-03 dtd 15 Dec 03 less encls
(5) Decision of US Court of Appeals (DC Cir) No. 05-5471, decided 19 Jan 07
(6) PERS-911 memo dtd 10 Sep 08 w/encl
(7) PERS-80 memo dtd 7 Oct 08
(8) Subject's ltr dtd 31 Dec 08 w/encl (Memo for Exec Dir, BCNR w/encls)
(9) Ltrs of recomm

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, at enclosure (1), which this Board denied on 17 June 1999 and 11 December 2003. He again requests removing his failures of selection by the Fiscal Year 1995 and 1996 Naval Reserve Line Commander Selection Boards; setting aside his discharge of 1 August 2001, thereby allowing him to participate as a member of the Navy Reserve; and granting him constructive satisfactory service, for purposes of eligibility for a reserve pension, since 1995. In the alternative, he now requests transfer to the Navy Reserve Retired List with 20 years of satisfactory service. The Assistant General Counsel (Manpower and Reserve Affairs) (AGC (M&RA)) has issued the memorandum at enclosure (2), directing that a new panel of the Board reconsider Petitioner's case in light of the information in the enclosure to the memorandum, Petitioner's letter of 5 June 2008.

The AGC (M&RA) also issued the letter at enclosure (3) advising Petitioner he had directed that a new examiner be assigned to the case. Pursuant to the instruction of the AGC (M&RA), a new examiner, [REDACTED] been assigned.

2. An entirely new panel of the Board, consisting of Messrs. Fales, Grover and Washington, reviewed Petitioner's allegations of error and injustice on 9 April 2009, and pursuant to its regulations, determined that relief should be denied. 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Enclosure (4) is the Board's report in Petitioner's most recent previous case, a reconsideration directed by the AGC (M&RA). It shows that on 20 January 2004, the AGC (M&RA) approved the Board's recommendation to deny relief.

d. Enclosure (5) is the decision of the U.S. Court of Appeals (District of Columbia Circuit) in Petitioner's case, affirming the district court's grant of summary judgment for the Navy. Petitioner's letter of 5 June 2008 asserts the court made a finding that "the Navy violated their own regulations for annual screening." However, the footnote on page 10 of the decision says "We do not reach the issue of whether the Navy violated its own screening regulations because, even assuming that the Navy failed to timely screen [Petitioner] for transfer to inactive status, nothing in the statute or the regulations mandates immediate transfer to inactive status after screening."

e. In correspondence at enclosure (6), PERS-911, the Navy Personnel Command (NPC) office with cognizance over Navy Reserve personnel administration, commented to the effect Petitioner's current petition should be denied as they still find no evidence of error or injustice committed by the Navy.

f. In correspondence at enclosure (7), PERS-80, the NPC office having cognizance over Navy Reserve officer promotions, recommended "retaining" the 20 December 2007 action of the Board's staff, to deny reopening Petitioner's case, and the adjudication by federal court.

g. Enclosure (8) is Petitioner's reply to enclosures (6) and (7).

h. Enclosure (9) comprises numerous letters of recommendation submitted on Petitioner's behalf.

CONCLUSION:

Upon review and consideration of all the evidence of record, and in concurrence with the advisory opinion at enclosure (6), the Board once again finds relief should be denied. Accordingly, the Board's recommendation is as follows:

RECOMMENDATION:

a. That relief be denied.

4. 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.

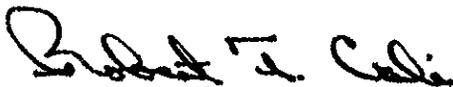
ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


6-2-09