



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

BAN
Docket No. 08074-09
24 March 2010

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 1430 Ser 811/628 of 23 Sept 09
(3) MILPERSMAN 1510-030 dtd 13 Sept 06
(4) Naval Recruiting Station Lancaster memo undated
(5) DD Form 4187 (Personnel Action) dtd 26 Sept 04
(6) NAVPERS 1070/613 dtd 1 Nov 08
(7) Service 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 given Time In Rate (TIR) credit as an E-4 while in the Army towards service in the Navy as an E-4.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 9 November 2009 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. The Board also considered an advisory opinion furnished by the Bureau of Naval Personnel attached as enclosure (2) that recommended no relief be granted.

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 enlisted into the U.S. Army on 26 March 2003 and was honorably discharged on 7 March 2008. He served 3 years, 5 months and 12 days as an E-4, enclosure (1).

c. On 28 April 2008, Petitioner enlisted in the U.S. Navy. His enlistment contract awarded him a rank of E-3 and a guaranteed subsequent advancement to E-4 upon completion of the Advanced Technical Field (ATF) "A" School¹. See enclosures (1), (3), and (6).

d. Petitioner claims that his Navy recruiter promised him a TIR credit as an E-4 for his service in the Army, (although this guarantee was not included in his enlistment contract). In support of his claim, Petitioner submitted a letter from the Naval Recruiting Station Lancaster, Pennsylvania from the recruiter in charge that "... [REDACTED] was to be entitled his TIR [from prior service as an E-4, effective 26 September 2004] and reinstatement as an E4...", enclosures (4) and (5).

e. On 1 November 2008, Petitioner completed AWS "A" school and was advanced to E-4/AWS3, enclosure (6). However, his TIR as an E-4 while in the Army was never credited to him. Therefore, his new TIR as an E-4 was established as the date he graduated from AWS "A" school.

f. In addition, had Petitioner been given the TIR credit as an E-4 for his service while in the Army, he would have been eligible to take the E5/AWS2 Navy-wide advancement exam in March 2009, (when first eligible). Therefore, Petitioner's command allowed him to take the E-5 advancement exam. He passed but did not advance. Note: If Petitioner had been credited with TIR for his U.S. Army service as an E-4, his Final Multiple Score would have been high enough to advance from the March 2009 cycle. In September 2009, Petitioner took the next cycle advancement exam and was selected for advancement to E-5/AWS2.

g. In an advisory opinion, enclosure (2), the Bureau of Naval Personnel (BUPERS) recommended that no relief be granted. They reason that the BUPERS Instruction 1430.16F, which provides guidance on crediting a member's TIR for Other Services Veterans (OSVETS), does not authorize TIR adjustment for E-4's.

CONCLUSION:

Upon review and consideration of all the evidence of the record, the Board finds the existence of an injustice warranting corrective action. The Board finds that although Petitioner did not have a written guarantee in his enlistment contract for a TIR adjustment for time served as an E-4 in the Army, he relied on the statement made to him by his recruiter. In addition, the Board also noted that the Navy recruiter wrote a letter on the Petitioner's behalf, stating that TIR credit for his service in the Army as an E-4, would be awarded to him. Further, the Board acknowledged that the Petitioner acted in good

¹ Pursuant to MILPERSMAN 1510-030, Petitioner would be automatically advanced to E-4 upon completion of the Air Warfare System (ASW) Operator "A" school.

faith when he enlisted in the Navy believing that he would receive the TIR credit for time served in the Army as an E-4. Therefore, the Board believed that if Petitioner's TIR was corrected when he graduated from "A" school, he would have scored high enough to advance to E5/AWS2 from the March 2009 Navy-wide advancement exam with an effective advancement date of 16 December 2009, and a TIR date of 1 July 2009. Accordingly, the Board concludes that the record should be corrected to show that Petitioner receive TIR credit for his service as an E-4 in the Army, toward his service as an E-4 in the Navy.

RECOMMENDATION:

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

a. Petitioner's TIR for service as an E-4 while in the Army be credited toward his TIR in the Navy as an E-4/AWS3, a total of 3 years, 5 months, and 12 days.

b. Petitioner was advanced to E5/AWS2 with an effective date of 16 December 2009 and a Time In Rate date of 1 July 2009.

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:


Assistant General Counsel
(Manpower and Reserve Affairs)

4/1/10