



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

JSR
Docket No. 02255-10
29 April 2010

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 10 Feb 10 w/attachments
(2) HQMC MMOA-4 memo dtd 26 Apr 10
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), counsel for Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show the lineal position, date of rank, and effective date in the grade of Chief Warrant Officer 3 (CWO3) Petitioner would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 2009 CWO3 Selection Board, rather than the FY 2010 CWO3 Selection Board. He specifically requested adjusting his CWO3 date of rank and effective date from 1 December 2009 to 1 February 2009. He also impliedly requested removing his failure of selection by the FY 2009 CWO3 Selection Board.

2. The Board, consisting of _____ and _____ and _____, reviewed Petitioner's allegations of error and injustice on 29 April 2010, 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 Headquarters Marine Corps office with cognizance over the subject matter of this case has commented to the effect that Petitioner's express request to backdate his promotion to CWO3 to 1 February 2009 and, by implication, his implied request to remove his failure of selection by the FY 2009 CWO3 Selection Board have merit and warrant 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 error and injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing his failure of selection by the FY 2009 CWO3 Selection Board.

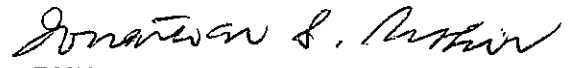
b. That his record be corrected further to show his date of rank and effective date in the grade of CWO3 as 1 February 2009, rather than 1 December 2009; and that his lineal precedence be adjusted accordingly.

c. 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.


d. 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.


For W. DEAN PFEIFFER
Executive Director