



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

BAN  
Docket No. 07085-10  
11 October 2011

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]  
[REDACTED]

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

- Encl: (1) DD Form 149 w/attachments  
(2) Naval Personnel Command (NPC) memo 1430 Ser 811/408 of 26 Jul 10  
(3) Office of the Chief of Naval Operations memo 1430 Ser N13/196 of 22 Apr 11  
(4) Office of the Assistant Secretary, Manpower and Reserve Affairs, Limited Delegation of Authority memo 27 Sept 11  
(5) NETPDTC Form 1430/3 for advancement cycle 204

1. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to validate his E-6/AE1 Navy-wide advancement examinations and show that he met the criteria to be advanced to E-6/AE1 from the September 2009 cycle.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George reviewed Petitioner's allegations of error and injustice on 3 October 2011 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 enclosures (2) and (3) which are recommendations from the Navy Personnel Command (NPC) Code 811 (Career Progression Department) and the Office of the Chief of Naval Operations (CNO) Code N13, that 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. Under BUPERINST 1430.16F, (Advancement Manual for Enlisted Personnel of the U.S. Navy and U.S. Navy Reserve), all personnel designated in certain ratings, including Petitioner's rating, "must maintain, as a minimum, continuous security clearance eligibility." This provision has been interpreted by NPC to mean that, in order to be eligible to participate in an advancement cycle, take an advancement exam or advance to the next highest grade, a Sailor in one of the designated ratings must hold a final clearance which has been adjudicated and granted by the Department of the Navy Central Adjudication Facility (DONCAF).

c. Petitioner entered the Navy in 2003 as a E-3. Over the next eight years, he advanced from E3 to E5 and participated in multiple E6 advancement cycles. During this time, he did not have a DONCAF adjudicated security clearance. In 2009, upon realizing that he did not have the required clearance, NPC invalidated the results of his E6 advancement cycles entirely. Petitioner avers that he was unaware of any deficiency in his clearance status. He cites the Navy's actions between 2003 and 2009 as evidence that he reasonably believed he was qualified to compete for advancement. The issue in this case is whether, under the circumstances, his record should be changed to validate the results of the E6 exam cycles.

d. Examination of Petitioner's naval record reveals the following: Petitioner enlisted in the Navy in May 2003. He completed and submitted the standard security questionnaire documents required of all enlistees. He attended and graduated AE "A" school in December 2003. He then transferred and received official order to VFA-11, where he took the E-4 and E-5 advancement examinations and was selected and advanced for both pay grades. He also was allowed to participate in the September 2008 E-6/AE1 exam but only received "Passed but Not Advanced" (PNA) points. He then transferred in late September 2008, and received follow on orders to VFA-106 until July 2011. While stationed with VFA-106, he participated in the March 2009 but did not achieve the final multiple score needed to advance to E6. However, because of his passing exam scores, for both September 2008 and March 2009, he was entitled to and received PNA points. Those points may be used in subsequent exam cycles to raise a participant's final multiple score.

e. In September 2009, Petitioner again was allowed and participated in the E-6/AE1 advancement examination. He successfully passed and was selected for advancement with an effective date of 16 June 2010. He was frocked on 4 December 2009.

f. In early March 2010, Petitioner did not participate in the March 2010 exam since he believed he was selected from the previous exam and did not have to retake the exam. There is no evidence that he was ever notified that he was ineligible to participate in advancement exams or to advance prior to taking the E-6/AE1 exams. However, in mid-March, Petitioner was notified that his September 2009 exam had been invalidated. Apparently, neither Petitioner, his command, nor NPC were aware that he was ineligible to participate in the exam cycle.

g. In addition, NPC invalidated the results of all of his E6 advancement exams. This had the effect of setting aside his scheduled advancement (from the September 2009 cycle) and depriving him of PNA points (earned on prior advancement cycles). NPC took this action because they learned that Petitioner had never had a DONCAF adjudicated security clearance.

h. Upon being notified of the deficiency in his clearance status, in late March 2010, Petitioner re-submitted the required security questionnaire documents to obtain the required security clearance. He received his final adjudicated security clearance promptly and without difficulty or hindrance on 19 June 2010. NPC has not, however, revalidated his exams.

i. In September 2010, with his final adjudicated clearance, he participated in the E6/AE1 Navy-wide advancement examination and was selected and advanced with an effective date of 16 June 2011.

j. Petitioner has applied to this Board seeking to have his E6/AE1 advancement exams validated retroactively for PNA points to apply toward his September 2009 advancement exam. He states that he was unaware that his clearance status was deficient. He had submitted the required security questionnaire documents long ago upon entering the Navy. He had graduated from AE "A" school and been transferred several times. He had advanced from E-3 to E-5. He was serving in his rate, and he had been allowed to participate in several exam cycles. He had never been held back in any way from progressing through his Navy career due to security clearance issues and he was not aware that there was a deficiency.

k. Petitioner's commanding officer strongly endorses his request. He states that "this Sailor was advanced to third class petty officer and second class petty officer. It is my belief that VFA-106, previous commands, and advancement validation errors have caused this Sailor the loss of advancement to first class petty officer". In addition, in March 2011, Petitioner's current command (VFA-106) submitted an Exception to Policy request to CNO, Code 13, enclosure (3). His request was denied in April 2011, citing that "without the PNA points from [cycles 200 and 203], his cycle 204 [September 2009] score would still fall short of the minimum multiple required to advance" and that "an exception to policy in this case would provide one Sailor with an unfair advantage over all other Sailors who were ineligible for advancement for similar reasons but were not allowed to take the exam".

l. Although a "Plan of the Week" (POW) from Petitioner's last command could not be obtain, a current POW from VFA-106 (where he was also allowed to participate in an advancement exam without a final adjudicated clearance), fails to disclose any evidence that the requirement to hold a security clearance was widely known or publicly announced.<sup>1</sup>

m. Review of Petitioner's September 2009 Worksheet, (enclosure 4) for the exam also fails to disclose any evidence that Petitioner was notified or aware of the requirement to hold a security clearance in order to participate in the advancement cycle. Nor does it disclose any evidence that Petitioner was aware of any deficiency in his clearance status.

n. Petitioner had never "lost" or had his security clearance revoked at any time. During his service in the Navy, he has never been involved in misconduct to lose or forfeit his security clearance. For the entire time he has been in the Navy, after his initial training, he served in his rating.

o. By enclosures (2) and (3), NPC Code 811 (Career Progression Department) and CNO Code 13, recommends that no relief be granted. NPC and CNO reasons as follows: (a) Under the governing instruction, he was not qualified to participate in the exam cycle; and (b) Allowing him to advance would be

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<sup>1</sup> Petitioner has since transferred from the command where he took the September 2008 E6/AE1 Navy-wide advancement exam. His previous command did not hold copies of the Plan of the Week (POW) from September 2009. However, Petitioner has provided a copy of the October 2009 POW from his current command.

unfair to other Sailors who were properly barred from taking exams for the same reasons at other commands.

CONCLUSION

Upon review and consideration of all the evidence, the Board concludes that Petitioner's request warrants favorable action. The Board determined the following: The Board was convinced that both Petitioner and the Navy were unaware of any deficiencies in his clearance status that would disqualify him from participating in an exam cycle prior to March 2010. His career progression had not been impeded in any way. He had attended schools, transferred, taken advancement exams, advanced and worked in his rating free from any impediment. Once the deficiency was identified, it was rectified, suggesting that if it had been identified earlier, it would have been resolved earlier. Petitioner's commanding officer strongly endorses Petitioner's request and finds that the errors in this case are not attributable to the Petitioner. The Board carefully considered the comments made in enclosures (2) and (3). The Board understood that, under the applicable regulations, Petitioner was strictly ineligible to participate in the exam. However, balancing the factors that militate in favor of relief against those that militate against, in the Board's view, the matter he should be resolved in favor of the Petitioner. Therefore, the Board concludes that the record should be corrected to validate Petitioner's E-6/AE1 advancement examinations from the relevant cycles.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, as follows:

- a. Petitioner's E-6/AO1 September 2008, March 2009, and September 2009 Navy-wide advancement examinations will be revalidated.
- b. Petitioner will receive PNA points from the September 2008, and March 2009 Navy-wide advancement exams.
- c. Petitioner was advanced from the September 2009 Navy-wide advancement examination with an effective date of 16 June 2010, with a Time In Rate date of 1 January 2010.
- d. A copy of this Report of Proceedings will be filed in 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 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. Pursuant to the delegation of authority set out in enclosure (3) and having assured compliance with the provisions of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723), it is hereby announced that the foregoing corrective action, has been approved by the Board on behalf of the Secretary of the Navy.

11 October 2011

  
W. DEAN PFEIFFER  
Executive Director