



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

JSR  
Docket No. 8712-10  
10 November 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 2 Aug 10 w/attachments  
and Subject's e-mail dtd 24 Aug 10  
(2) Subject's fitrept for 12 Feb - 16 Apr 04  
(3) HQMC MMOA-4 memos dtd 13 Oct and 4 Nov 10  
(4) HQMC MMPR-1 e-mail dtd 15 Oct 10  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that the date of rank and effective date of his promotion to captain be adjusted from 1 June 2008 to reflect selection by the Fiscal Year (FY) 2007 Captain Selection Board, rather than the FY 2009 Reserve Captain Selection Board. He also requested removing his failures of selection by the FY 2007 and 2008 Captain Selection Boards. Finally, he impliedly requested correction of his record to show his discharge from the Regular Marine Corps on 1 November 2007 was by reason of voluntary resignation, rather than failures of selection for promotion to captain, and further show that he has been on the active-duty list continuously since his commissioning as a Marine Corps Reserve officer.

2. The Board, consisting of Messrs. Clemmons, Sproul and Washington, reviewed Petitioner's allegations of error and injustice on 10 November 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. After Petitioner had failed of selection by the FY 2007 and 2008 Captain Selection Boards, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board directed removing an adverse fitness report (copy at enclosure (2)) from his record. Because of the failures of selection for promotion, he was discharged from the Regular Marine Corps on 1 November 2007, and he accepted a commission as a first lieutenant in the Marine Corps Reserve without a break in service. After the fitness report had been removed from his record, he was selected by the FY 2009 Reserve Captain Selection Board and promoted with a date of rank and effective date of 1 June 2008.

c. In correspondence attached as enclosure (3), the HQMC office with cognizance over the subject matter of Petitioner's requests to remove his failures of selection for promotion and adjust the date of rank and effective date of his promotion has commented to the effect that these requests have merit and warrant favorable action.

d. Enclosure (4) shows that 1 September 2006 is the date of rank and effective date Petitioner would have been assigned, had he been promoted as an FY 2007 Captain Selection Board selectee.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (4), the Board finds the existence of an injustice warranting the following corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show his date of rank and effective date in the grade of captain as 1 September 2006, rather than 1 June 2008; and that his lineal precedence be adjusted accordingly.

b. That his record be corrected further by removing his failures of selection by the FY 2007 and 2008 Captain Selection Boards.

c. That his record be corrected further to show his discharge from the Regular Marine Corps on 1 November 2007 was

by reason of voluntary resignation, rather than failures of selection for promotion.

d. That his record be corrected further to show he has been on the active-duty list continuously since his commissioning as a Marine Corps Reserve officer.

e. That he be nominated for an original appointment as a captain in the Regular Marine Corps under title 10, United States Code, section 531(a)(1).

f. Excepting that which reflects Petitioner's performance of service while he was not on the active-duty list, 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.

g. 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. 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