



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

BAN
Docket No. 00712-11
24 October 2011

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Naval Personnel Command (NPC) memo 1430 Ser 811/306
of 9 Jul 11
(3) Office of the Assistant Secretary, Manpower and
Reserve Affairs, Limited Delegation of Authority memo
27 Sept 11
(4) NETPDTC Form 1430/2 for advancement cycle 211

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-5/MA2 Navy-wide advancement examinations and show that he met the criteria to be advanced to E-5/MA2 from the March 2011 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 enclosure (2) which is a recommendation from the Navy Personnel Command (NPC) Code 811 (Career Progression Department) 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 2005 as an E1. Over the next six years, he advanced from E1 to E4 and participated in multiple E5 advancement cycles. During this time, he did not have a DONCAF adjudicated security clearance. In 2010, upon realizing that he did not have the required clearance, NPC invalidated the results of his E5 advancement cycles entirely. Petitioner avers that he was unaware of any deficiency in his clearance status. He cites the Navy's actions between 2005 and 2010 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 E5 exam cycles.

d. Examination of Petitioner's naval record reveals the following: Petitioner enlisted in the Navy in September 2005. He completed and submitted the standard security questionnaire documents required of all enlistees. In January 2006, he transferred to VP-30 in Jacksonville, Florida where he was advanced to E3. Petitioner was then selected for the Master-At-Arms (MA) rating. He attended and graduated MA school on 2 February 2008 and was advanced to E4/MA3 through the accelerated advancement program. In September 2008, he participated in the E-5/MA2 examination. However, he "Passed but not Advanced" (PNA). Petitioner then participated in the next three E-5/MA2 advancement examinations. He successfully passed those exams, but did not achieve the final multiple score needed to advance to E5. However, because of his passing exam scores, 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 2010, after taking the E5/MA2 exam again, and PNA'ing the exam, he was notified in December 2010 that his E-5/MA2 advancement exam was being invalidated due to not having

a final adjudicated security clearance. Apparently, neither Petitioner, his command, nor NPC were aware that he was ineligible to participate in the exam cycles. There is no evidence that he was ever notified that he was ineligible to participate in advancement exams or to advance.

f. In addition, NPC invalidated the results of all of his E5 advancement exams. This had the effect of 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.

g. Upon being notified of the deficiency in his clearance status in December 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 undue difficulty or hindrance on 4 January 2011. NPC has not, however, revalidated his exams.

h. In March 2011, with his final adjudicated clearance, he participated in the E5/MA2 Navy-wide advancement examination; however, he PNA'd the exam with a final multiple score of 150.69, missing advancement by 8.31 points (minimum multiple required was 159.00). However, had he received had all the PNA points from the previous examination cycles that were invalidated for E-5/MA2, he would have had a final multiple score of 161.69, making him a "selectee" for advancement to the next higher pay-grade.

i. Petitioner has applied to this Board seeking to have his E5 advancement exams validated retroactively for PNA points to apply toward his March 2011 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 MA "A" school and been transferred several times. He had advanced from E-1 to E-4. 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. Petitioner's commanding officer has endorsed his request for a revalidation of prior advancement examinations.

j. Review of the "Plan of the Week" (POW) from Naval

Station, Norfolk, Virginia¹ for the September 2011 examination fails to disclose any evidence that the requirement to hold a security clearance was widely known or publicly announced.²

l. Review of Petitioner's last Worksheet, (enclosure 4) for the March 2010 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.

m. 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.

n. By enclosure (2), NPC Code 811 (Career Progression Department) recommends that no relief be granted. NPC reasons as follows: (a) Under the governing instruction, he was not qualified to participate in the exam cycle; (b) Allowing him to advance would be unfair to other Sailors who were properly barred from taking exams for the same reasons at other commands; and (c) Although it is unfortunate that his exam was invalidated through no fault of his own, a command admission of error is not adequate justification for violation of the policies.

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 December 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

¹ The homeport of MAREXSECRON 6

² Petitioner current command MAREXSECRON 6, where he took his E-5/MA2 Navy-wide advancement exams did not hold copies of the Plan of the Week (POW) from 2008-2010. However, Petitioner has provided a copy of his commands current POW. The POW's still do not mention anything regarding examination dates or the date on which participants should sign their Worksheets.

not attributable to the Petitioner. The Board carefully considered the comments made in enclosure (2). 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 should be resolved in favor of the Petitioner. Therefore, the Board concludes that the record should be corrected to validate Petitioner's E-5/MA2 advancement examinations from the relevant cycles.

RECOMMENDATION:

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

- a. Petitioner's E-5/MA2 September 2008, March 2009, September 2009, March 2010, and September 2010 Navy-wide advancement examinations will be revalidated.
- b. Petitioner will receive PNA points from the September 2008, March 2009, September 2009, March 2010, and September 2010 Navy-wide advancement exams.
- c. Petitioner was advanced from the March 2011 Navy-wide advancement examination. The effective date will be the date that he would have advanced if the exams had never been invalidated.
- 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.

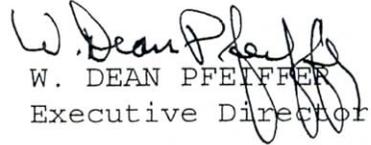
ROBERT D. ZSALMAN
Recorder


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.

24 October 2011


W. DEAN PFEIFFER
Executive Director