



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

BAN
Docket No. 03866-11
5 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 811/371 of 5 Jul 11
 - (3) Office of the Assistant Secretary, Manpower and Reserve Affairs, Limited Delegation of Authority memo 27 Sept 11
 - (4) NETPDTC Form 1430/3 for advancement cycle 208

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 her E-5/AO2 Navy-wide advancement examinations and show that she met the criteria to be advanced to E-5/AO2 from the September 2010 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 2006. Over the next three years, she advanced from E1 to E4 and participated in multiple E5 advancement cycles. During this time, she did not have a DONCAF adjudicated security clearance. In 2009, upon realizing that she did not have the required clearance, NPC invalidated the results of her E5 advancement cycles entirely. Petitioner avers that she was unaware of any deficiency in her clearance status. She cites the Navy's actions between 2006 and 2009 as evidence that she reasonably believed she was qualified to compete for advancement. The issue in this case is whether, under the circumstances, her 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 on 28 March 2006. She completed and submitted the standard security questionnaire documents required of all enlistees. She attended AO "A" school and graduated on 28 July 2006. During the next two years, she was stationed aboard the USS THEODORE ROOSEVELT CVN 71, where she advanced to E-3. She later transferred to VAW 120 CARAEWRON, where she advanced to E-4. Her next duty station was at CNATTU Jacksonville, Florida, where in March 2009 and September 2009, she participated in the E-5/AO2 Navy-wide advancement examinations. She successfully passed those exams, but did not achieve the final multiple score needed to advance to E5. However, because of her passing exam score, she was entitled to and received "Passed but not Advanced" (PNA) points. Those points may be used in subsequent exam cycles to raise a participant's final multiple score. There is no evidence that she was ever notified that she was ineligible to participate in advancement exams or to advance. In early March 2010, she transferred to the PATROL SQUADRON FIVE, in Naval Air Station, Jacksonville, Florida.

e. In March 2010, at Petitioner's new command, she was authorized by the Educational Service Office to participate again in the E-5/AO2 Navy-wide advancement examination. In May 2010, when the advancement results were released, she learned that she had again, PNA'd the exam. Apparently, neither Petitioner, her command, nor NPC was aware that she was ineligible to participate in the exam cycle.

f. In September 2010, Petitioner participated in the E-5/AO2 advancement exam again. This time, she achieved the final multiple score necessary to advance to E5. She was notified of her selection and her advancement was scheduled to be effective 16 June 2011. She was also frocked¹ to E-5/AO2. However, in December 2010, she was notified that she would not be advanced as scheduled. NPC invalidated the results of all of her E5 advancement exams. This had the effect of setting aside her scheduled advancement (from the September 2010 cycle) and depriving her 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 her clearance status, in February 2011, Petitioner re-submitted the required security questionnaire documents to obtain the required security clearance. She received her final adjudicated security clearance fairly promptly and without undue difficulty or hindrance on 14 June 2011. NPC has not, however, revalidated her exams.

h. Petitioner has applied to this Board seeking to have her E5 advancement exams validated retroactively. She states that she was unaware that her clearance status was deficient. She had submitted the required security questionnaire documents long ago upon entering the Navy. She had graduated from AO "A" school and been transferred several times. She had advanced from E-1 to E-4. She was serving in her rate. And she had been allowed to participate in several exam cycles. She had never been held back in any way from progressing through her career due to security clearance issues and she was not aware that there was a deficiency.

¹ Frocking is the custom and policy of allowing a Petty Officer who has been selected for promotion to wear the insignia of the higher grade before the official date of the advancement. A frocked Petty Officer is accorded the privileges and authorities of the "new" rank, but does not receive the pay for it, because it is not yet official.

i. Petitioner's commanding officer strongly endorses her request. He states that she "truly believed that she was in compliance with all advancement requirements" and that she is an exceptional performer.

j. Review of the "Plan of the Week" (POW) from PATROL SQUADRON FIVE in the weeks leading up to the September 2010 examination fails to disclose any evidence that the requirement to hold a security clearance was widely known or publicly announced. The POWs only addressed the examination dates and the date on which participants should sign their Worksheets.

k. Review of Petitioner's Worksheet, (enclosure 4) for the September 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 her clearance status.

l. In June 2011, Petitioner's security clearance was favorably adjudicated by DONCAF. She had never "lost" or had her security clearance revoked at any time. She has never been involved in misconduct. For the entire time she has been in the Navy, after her initial training, she served in her rating.

m. By enclosure (2), NPC Code 811 (Career Progression Department) recommends that no relief be granted. NPC reasons as follows: (a) Under the governing instruction, she was not qualified to participate in the exam cycle; (b) Allowing her 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 her exam was invalidated through no fault of her 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 her clearance status that would disqualify her from participating in an exam cycle prior to December 2010. Her career progression had not been impeded in any way. She had attended schools, transferred, taken advancement exams, advanced and worked in her 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 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/AO2 advancement examinations from the relevant cycles.

RECOMMENDATION:

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

a. Petitioner's E-5/AO2 March and September 2009, and March and September 2010 Navy-wide advancement examinations will be revalidated.

b. Petitioner will receive PNA points from the March and September 2009, and March 2010 Navy-wide advancement exams.

c. Petitioner will be advanced to E-5/AO2 from the September 2010 Navy-wide exam with an effective date of 16 June 2011, and a Time In Rate date of 1 January 2011.

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.

5 October 2011


For W. DEAN PFEIFFER
Executive Director