



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD SUITE 1001  
ARLINGTON VA 22204-2490

BAN

Docket No. 11272-11  
13 February 2012

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

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

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

Encl: (1) DD Form 149 w/attachments  
(2) Naval Personnel Command (NPC) memo 1430 Ser 811/563  
of 15 Dec 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 his E-4/AO3 Navy-wide advancement examinations and show that he met the criteria to be advanced to E-4/AO3 from the September 2010 cycle.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George reviewed Petitioner's allegations of error and injustice on 30 January 2012 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 2009. Over the next year, he advanced from E1 to E3 and participated in two E-4 advancement cycles. During this time, he did not have a DONCAF adjudicated security clearance. In 2011, upon realizing that he did not have the required clearance, NPC invalidated the results of his E-4 advancement cycles entirely. Petitioner avers that he was unaware of any deficiency in his clearance status that would disqualify him from competing for advancement. He cites the Navy's actions between 2009 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 E-4 exam cycles.

d. Examination of Petitioner's naval record reveals the following: Petitioner enlisted in the Navy in June 2009. He completed and submitted the standard security questionnaire documents required of all enlistees. He attended and graduated AO "A" school in August 2009. Petitioner then transferred to the Strike Fighter Squadron Eighty Seven (VFA-87) in November 2009, and attended and graduated AO "C" school in January 2010. In March 2010, he participated in the E-4/AO3 Navy-wide advancement examination. He passed the exam, but did not achieve the final multiple score necessary to advance. Therefore, since he "Passed but not Advanced" (PNA), 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, Petitioner again participated in the E-4/AO3 advancement exam and was selected for future advancement. He was frocked in November 2010. 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 approximately February 2011, NPC invalidated the results of his March 2010 and September 2010 advancement exams. This had the effect of setting aside his scheduled advancement (from the September 2010 cycle) and depriving him of PNA points (earned on the prior advancement cycle). NPC took this action because they learned that Petitioner had never had a DONCAF adjudicated security clearance.

g. In March 2011, after being notified of the deficiency in his clearance status, Petitioner re-submitted the required security questionnaire documents to obtain the required security clearance. However, by this time, he had missed the opportunity to participate in the March 2011 exam cycle. He received his final adjudicated security clearance without undue difficulty or hindrance on 14 September 2011.

h. In September 2011, with his final adjudicated clearance, Petitioner participated in the E-4/AO3 advancement exam and was selected for advancement.

i. Petitioner has applied to this Board seeking to have his E-4 March 2010 and September 2010 advancement exams validated retroactively for PNA points to apply toward his September 2010 advancement exam for advancement. 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 AO "A" and "C" schools and had been able to take the E-4 exams without any prior issues. 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 that would disqualify him from competing for advancement. Petitioner's commanding officer (CO) has strongly endorsed his request.

j. Review of the "Plan of the Week" (POW) from his current command for the September 2010 examination fails to disclose any evidence that the requirement to hold a security clearance was widely known or publicly announced.<sup>1</sup>

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<sup>1</sup> Petitioner has provided a copy of his command's POW's for the September 2010 Navy-wide advancement exam. The POW's do not mention anything regarding Sailors needing a final adjudicated clearance in order to compete for advancement.

k. Review of Petitioner's last 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 his clearance status.

l. 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.

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, 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 the exam cycles in 2010. His career progression had not been impeded in any way. He had attended schools, transferred, taken advancement exams, 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. 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 exams. 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-4/AO3 advancement examinations from the relevant cycles.

RECOMMENDATION:

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

a. Petitioner's E-4/AO3 March 2010 Navy-wide advancement examination will be revalidated.

b. Petitioner will receive PNA points from the March 2010, Navy-wide advancement exam.

c. Petitioner was advanced from the September 2010 Navy-wide advancement examination 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.

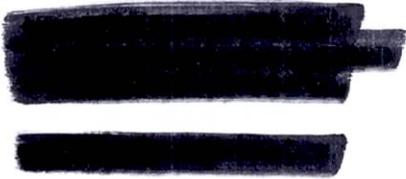
13 February 2012

  
W. DEAN PRENTNER  
Executive Director



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

TJR  
Docket No: 5455-11  
8 March 2012



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 March 2012. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 26 June 2001 at age 17 and began a period of active duty on 12 July 2001. You served without disciplinary incident until 13 February 2003, when you received nonjudicial punishment (NJP) for assault and using provoking speech and/or gestures. The punishment imposed was restriction and extra duty for 30 days, reduction in paygrade, which was suspended for six months, and a \$1,300 forfeiture of pay.

On 3 May 2005 you received NJP for absence from your appointed place of duty. Shortly thereafter, on 15 June 2005, you received an adverse performance evaluation in which your reporting senior stated that you were a below average Sailor who required direct supervision, and that you were not recommended for advancement, retention, or reenlistment. The records also contains an administrative remarks entry dated 15 June 2005 which states that your recommendation for advancement had been withdrawn due to your substandard performance.

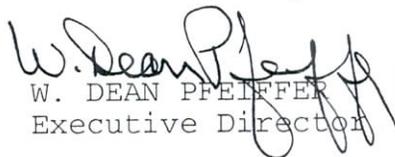
On 11 July 2005 upon completion of your required active service, you were honorably released from active duty and transferred to the Navy Reserve. At that time you were not recommended for further retention or reenlistment and were assigned an RE-4 reenlistment code. On 25 June 2009 you were honorably discharged at the expiration of your enlistment.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to change your reenlistment code. Nevertheless, the Board concluded these factors were not sufficient to warrant a change in your reenlistment code because of your misconduct which resulted in two NJPs. Further, the Board concluded that your nonrecommendation for reenlistment was sufficient to support the assignment of an RE-4 reenlistment code, which is authorized by regulatory guidance. Accordingly, your application has been denied.

The Board suggested that you may wish to apply for a waiver of your RE-4 reenlistment code, if you would like to reenlist, with branches of the armed forces other than the Navy.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

  
W. DEAN PFEIFFER  
Executive Director