



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

in

HD
Docket No. NR2968-14
21 August 2014

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD (RECONSIDERATION)

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

Encl: (1) Counsel's brief in support of recon by SSB,
undtd and counsel's amendment dtd 19 Feb 14
(2) PERS-91 ltr dtd 5 May 14 w/enclosure
(3) PERS-80 memo dtd 13 May 14
(4) Counsel's undtd ltr

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show he was offered continuation to a date that allows him the opportunity to gain eligibility for Reserve retired pay. He further requested removing his failures of selection by the Fiscal Year (FY) 04 through 07 Reserve Line Commander Selection Boards (he actually failed of selection FY 04 through 09), correcting his record to reflect either reconstructed fitness reports for 2001 to 2003 or a memorandum directing that future promotion boards ignore the absent fitness reports from that period, and granting him a special selection board (SSB) for promotion to commander.

2. The Board, consisting of Messrs. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 21 August 2014, 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 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. In Petitioner's previous case, docket number 09169-12, his record was corrected to show that on 31 January 2013, he was appointed a lieutenant commander, designator 1635, in the Navy Reserve, with a date of rank appropriate in light of his break in service (he was discharged from the Navy Reserve on 1 November 2008) and further corrected to show he was offered continuation until his 24th year of commissioned service (to expire 1 February 2017). His request for SSB consideration was denied, as the unspecified missing fitness reports on which he based his request were still missing, so he could not be considered on the basis of a complete record.

c. In enclosure (2), PERS-91, the Navy Personnel Command (NPC) office with cognizance over Petitioner's request for continuation, has commented to the effect his request has merit and warrants favorable action, specifically, changing the date of his reappointment from 31 January 2013 to 16 December 2013, adjusting his lieutenant commander date of rank accordingly from 31 January 2013, and showing he was offered continuation until 1 January 2022 (when he would have 24 years of commissioned service), rather than 1 February 2017.

d. In enclosure (3), PERS-80, the NPC office with cognizance over promotions, commented to the effect that Petitioner's remaining requests should be denied, because it was his responsibility to review his record ahead of promotion board consideration, he could have submitted a letter to NPC explaining why any missing fitness report could not be obtained, he failed to complete these steps and his complete record was considered by the promotion boards.

e. Enclosure (4) is Petitioner's counsel's reply to the NPC advisory opinions, in which he details the relief Petitioner seeks.

f. Petitioner's record does reflect active duty fitness reports for 2001 to 2003, the period during which he asserts he was missing such fitness reports. Copies of his active duty fitness reports for 24 April 2000 to 6 April 2001, 9 April to 28 September 2001, 4 to 25 October 2002 and 28 October 2002 to 20 August 2003 are at Tab A.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds an injustice warranting the partial relief proposed by PERS-91. Since Petitioner's record does include active duty fitness reports for the period during which he asserts he was missing such reports, the Board finds his remaining requests should be denied. In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 16 December 2013, rather than 31 January 2013, he was appointed a lieutenant commander, designator 1635, in the Navy Reserve, with a date of rank adjusted from 31 January 2013 to a date of rank appropriate in light of his adjusted break in service.

b. That his record be corrected further to show that he was offered continuation until his 24th year of commissioned service to expire on 1 January 2022, rather than 1 February 2017.

c. 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.

d. 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.

e. That the remainder of Petitioner's request be denied.

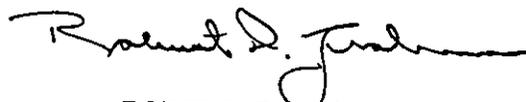
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the

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.



ROBERT D. ZSALMAN
Acting Executive Director