



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

[REDACTED]
Docket No. 8767-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USNR,
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) Title 10 U.S.C. § 14301
(c) SECNAVINST 1420.3

Encl: (1) DD Form 149 w/attachments
(2) [REDACTED] Statement of Service, 16 Aug 22
(3) NAVPERS 1000/4 Appointment Acceptance and Oath of Office, 10 Dec 21
(4) OLC (BUPERS-00J) memo, 26 Jan 23
(5) NPC memo 1401 PERS-80/0048, 23 Feb 23

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting removal of her failure of selection during the Fiscal Year (FY) 2023 Navy Reserve Commander Staff Officer Corps Promotion Selection Board (RO5S PSB).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegation of error and injustice on 7 March 2023 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, relevant portions of Petitioner's 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, found as follows:

a. On 31 August 2006, Petitioner separated from active duty as a Lieutenant in the Judge Advocate General Corps and transferred to the Navy Individual Ready Reserve. Petitioner was promoted to Lieutenant Commander on 1 July 2008 and discharged from the Navy Reserve on 1 February 2009. After a lengthy break in service, Petitioner signed a new oath of office to enter the Navy Reserve Active Status List (RASL) on 17 December 2021, with a 10 December 2021 date of rank. Enclosures (2) and (3).

b. On 1 March 2022, the FY 2023 RO5S PSB convened, Petitioner was considered for promotion, and not selected.

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c. In her application, Petitioner contends that, according to reference (b), an officer is eligible for consideration by a PSB if the officer is on the RASL and has continuously performed on the RASL for one year ending on the convening date of the PSB. Petitioner also contends she had not served on the RASL for one year when her record went before the PSB, thus consideration of her record was an error of law and regulation. Enclosure (1).

d. Advisory opinions (AO) were furnished by the Office of Legal Counsel (BUPERS 00J) and the Navy Personnel Command (NPC) for the Board's consideration recommending that the requested relief be approved. BUPERS-00J opined that an administrative error contributed to a miscalculation of the Petitioner's date of rank and entry on the RASL, resulting in her being incorrectly considered for promotion. NPC noted that Petitioner was on the RASL for 81 days, from 10 December 2021 through the PSB convene date and determined that Petitioner was erroneously considered for promotion by the FY 2023 RO5S PSB because she had not continuously perform service on the RASL for one year. Enclosures (4) and (5)

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting corrective action.

The Board concurred with the AOs that, according to references (b) and (c), Petitioner's record was incorrectly considered by the FY23 RO5S PSB, resulting in her failure of selection. The Board determined that the Petitioner submitted sufficient evidence to support her contentions and concluded that her failure of selection should be removed.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's record be corrected by removing the FY 2023 RO5S PSB failure of selection.

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.

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.

3/25/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]