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

HD:hd
Docket No: 02507-01
28 August 2001

[REDACTED]

Dear [REDACTED]

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

You requested, in effect, removal of your failures of selection by the Fiscal Year (FY) 99 and 00 Naval Reserve Line Lieutenant Commander Selection Boards; that you be granted a special selection board for FY 99; that your discharge of 31 March 2000 from the Naval Reserve be set aside; that you be reinstated to the Inactive Status List (ISL) in the grade of lieutenant, with a date of rank adjustment to reflect seniority as if you had been placed on the ISL on 1 June 1998; and that your 16 June 1995 completion of the Joint Maritime Operations Course be filed in your record.

Your request to file your completion of the Joint Maritime Operations Course was not considered, as you have not exhausted your administrative remedies. You may ask the Navy Personnel Command (NPC) to file this documentation.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 August 2001. 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. In addition, the Board considered the advisory opinions furnished by NPC dated 11 and 25 June 2001, copies of which are attached. The Board also considered your letter dated 9 August 2001.

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

The Board found your failure by the FY 99 Naval Reserve Line Lieutenant Commander Selection Board should stand, and you should not receive consideration by a special selection board for FY 99, as you did not exercise reasonable diligence to determine whether you would be eligible for promotion consideration, and to ensure that the promotion board would have your completion of the Joint Maritime Operations Course. They noted that Secretary of the Navy Instruction (SECNAVINST) 1401.1B, paragraph 6.b states "A special selection board will not be convened to consider any officer who, through the exercise of reasonable diligence, might have discovered and corrected the error or omission in the official record prior to convening the promotion selection board that considered, but did not select the officer."

The Board found your FY 00 failure should stand as well. In this regard, they noted that the 19 May 1999 Naval Reserve Officer Mobilization Disposition Board was approved on 26 July 1999, and that the FY 00 promotion board adjourned on 22 June 1999. Accordingly, they found that even if you had been considered by the 19 May 1999 mobilization disposition board, and you had been transferred to Standby Reserve - Inactive (ISL) status as a result of approval of a board recommendation, the transfer could not have occurred until after the FY 00 promotion board had adjourned. This means you were properly in an active status while the selection board was in session, so your failure of selection was valid in any event. The Board further noted that as a result of review by the mobilization disposition board, you could have been discharged, rather than transferred to inactive status. Finally, they found nothing improper in your not having been screened between 31 May 1998 and 19 May 1999, as no mobilization disposition board was scheduled during that period; screening by such a board was then a prerequisite for transfer from an active status; and the applicable authorities did not require annual screening boards, rather, SECNAVINST 1920.6A, enclosure (3), paragraph 12a stated "The Secretary of the Navy shall, when necessary [emphasis added] convene a board to screen Reserve officers."

Since the Board found insufficient grounds to remove your failures of selection for promotion or grant you a special selection board, they had no basis to set aside your discharge from the Naval Reserve.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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

Enclosures



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-911
11 Jun 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO [REDACTED]
[REDACTED] BCNR, [REDACTED]

Ref: (a) BCNR memo 5420 PERS-OOZCB of 31 May 01
(b) COMNAVPERSCOM ltr 1920 PERS-911 of 1 Nov 99

Encl: (1) BCNR File No. 02507-01

1. Per reference (a), enclosure (1) is returned with the recommendation that E [REDACTED]'s petition be denied. [REDACTED] requesting that his two failures of selection for promotion be removed, his discharge be canceled and he be considered for promotion before a Special Selection Board.
2. [REDACTED] was commissioned a Naval officer on 31 May 1989 and served on active duty until 31 July 1996, at which time he was discharged from active duty and immediately signed a Naval Reserve appointment. He affiliated with a Naval Reserve unit on 9 October 1996 and served in that unit until 1 December 1996, at which time he transferred to the Individual Ready Reserve (IRR) due to school conflict. He remained in the IRR until he was discharged on 31 March 2000 for having twice failed of selection for promotion.
3. All members of the Ready Reserve, including the Individual Ready Reserve, are required by law to be considered by Promotion Boards, regardless of level of participation. The zones for promotion boards are published by ALNAV message, as are the results of the boards. Officers are not individually notified of non-selection. It is ultimately the individual officer's responsibility to be aware of his status and his eligibility for promotion, and to plan accordingly. [REDACTED] was a member of the Ready Reserve since his separation from active duty and, therefore, was eligible for consideration by promotion boards.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO EX-LT [REDACTED]

He was correctly considered by the FY-99 and the FY-00 promotion boards and failed on each occasion. Specific reasons for his non-selection are not available, as board deliberations are confidential in nature and records are not kept. We can only surmise that his record was not competitive when compared with other eligible candidates when viewed within the numerical constraints placed on selection boards. From our observations of past boards, it is our opinion that the Joint Maritime Operations course [REDACTED] reportedly completed on active duty and was not in his record would have had little or no impact on the Board's decision not to recommend selection. We believe his lack of participation for the years immediately preceding his consideration by promotion boards to be the main reason for his non-selection.

4. Per Title 10, U.S. Code, Chapter 1407, a lieutenant who has at least twice failed of selection and has completed his eight-year military service obligation must transfer to the Retired Reserve, if eligible, or be discharged. [REDACTED] was notified, per reference (b), that he had become subject to the attrition provisions of law and, because he had not earned 20 years of qualifying service, his honorable discharge from the Naval Reserve was required by 31 March 2000. There is no provision of law or policy to waive this requirement.

5. With regard to [REDACTED]'s not being screened for participation, per DoD Directive 1200.15 and SECNAVINST 1920.6B, the 50-point screening that he addresses in his petition, the policy only applies to officers who have completed 20 or more years of qualifying service and are eligible for a retirement. Once an officer becomes eligible for retirement, he is required to earn at least 50 retirement points each anniversary year to remain in an active status. Unfortunately, [REDACTED] did not meet the criteria of this policy because he did not have 20 qualifying years of service.

6. For officers who have not yet reached retirement eligibility, SECNAVINST 1920.6B permits, but does not direct transfer of officers who do not meet a minimum participation requirement of 27 points per anniversary year. On a routine basis, we screen the IRR for officers who have completed their eight-year military service obligation and fail to earn 27 retirement points. Until December 1999, this screening was encumbered by the fact that we were required to place each

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO EX [REDACTED]
[REDACTED], USNR [REDACTED]

member before a Naval Reserve Officer Mobilization Disposition Board before we could transfer a member from an active status. This process normally took about four months of preparation before the Board met, and another three to four months after conclusion of board action before transfer could be effected.

7. The 1997 Naval Reserve Mobilization Disposition Board that convened in March 1997 was held before [REDACTED] completed his military service obligation. In 1998, we did not conduct a Mobilization Disposition Board due to the Bureau of Naval Personnel's move to Memphis, TN. The next Board was held in May 1999, but did not include any lieutenants because the Lieutenant Promotion Selection Board was scheduled to meet in June and we do not attempt to change an officer's status during a promotion board. As a result, E [REDACTED] was not transferred from the IRR to S-2 status.

8. We find no error or injustice in this case. [REDACTED] was a member of the Ready Reserve since his separation from active duty in 1996. He was properly considered for promotion by the FY-99 and FY-00 Promotion Selection Boards and failed on both occasions. He made a career decision in 1996 to stop participating in the Naval Reserve and pursue a law degree. Consequently, he twice failed of selection requiring his honorable discharge from the Naval Reserve. We regret a more favorable reply is not possible in this case. If you have questions concerning this matter, please contact this office, PERS-91B, at (901) 874-4482.

[REDACTED]

Director, Naval Reserve Personnel Administration Division

2507-01



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-86
JUN 25 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
EX-LIEUTENANT [REDACTED], USNR, [REDACTED]

Ref: (a) BCNR memo 5420 PERS-00ZCB of 31 May 01
(b) SECNAV Instruction 1401.1B

Encl: (1) BCNR File 02507-01 w/Service Record

1. Per reference (a), enclosure (1) is returned with the recommendation that [REDACTED]'s petition is denied. EX-LT [REDACTED]'s requesting that two failures of select be removed, assignment to a special selection board and his discharge be canceled.

2. An examination of [REDACTED] record which went before the FY-00 LCDR selection board was conducted and the Joint Maritime Operations correspondence course was not present in his record as he pointed out in his petition. However, his detaching fitreps as well as all other pertinent documents were present. It is our opinion that [REDACTED] record was substantially complete before the board and there are no grounds for a special board based on material error of fact or material administrative error as outlined in reference (b). Therefore, since his record was substantially complete a special selection board is not warranted. Additionally, in accordance with reference (b) officers have a duty to review their records periodically to ensure their records are complete and accurate. An officer's request for a special selection board must detail the steps the officer took to ensure the completeness and accuracy of the official record prior to the convening date of the board which considered [REDACTED] but failed to select the officer. It is our opinion that [REDACTED] did not exercise reasonable diligence in the review of his official record which led to his placement in the individual ready reserve rather than on the inactive status list as he outlined in his petition.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
EX [REDACTED]

3. In [REDACTED] petition he asked for a special selection board for FY-98, it is a matter of record that he was not eligible for the FY-98 selection board because he was not in zone for promotion in that fiscal year. As a matter of record he failed of selection in FY-99 and FY-00 and would be eligible for special selection boards only in the years where he was eligible for promotion.

4. Additionally [REDACTED] requested a removal of the fail of select for FY-98. As stated above he was not eligible for the FY-98 LCDR promotion selection board, and no fail of select exists for that fiscal year, therefore it cannot be removed as requested in his petition. However, fails of select do exist for FY-99 and FY-00 and we concur with the opinion rendered by PERS-9, that his record was not competitive when compared with other eligible candidates when viewed within the numerical constraints placed on the selection board. We also concur with PERS-9 that these fails of select should remain.

5. EX-Lieutenant [REDACTED] can be justifiably proud of his record and years of contributions; the negative response to his petition does not detract from his honorable service to this nation and the United States Navy.

[REDACTED]

Director, Reserve Officer
Promotions, Appointments, and
Enlisted Advancement Division