



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

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HD:hd
Docket No: 03894-01
15 October 2001

LCDR [REDACTED] DC USNR
[REDACTED]
[REDACTED]

Dear Commander [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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 October 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 opinion furnished by the Navy Personnel Command dated 14 June 2001, a copy of which is attached. The Board also considered your letter dated 27 August 2001 with enclosures.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Concerning the issue of exceeding the statutory 18-month limitation on delay of promotion, the Board found that had timely action been taken to terminate the delay, you would have been removed from the promotion list earlier, rather than promoted. 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

Enclosure



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

1611
Ser 834C/314
14 Jun 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: LCDR [REDACTED] DC, USNR-R, [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB of 7 Jun 01
(b) SECNAVINST 1420.1A

Encl: (1) BCNR file 03894-00

1. Reference (a) requested comments and recommendations concerning LCDR [REDACTED] request to be reinstated on the FY-96 Active Commander Staff promotion list. Enclosure (1) is returned as a matter under the purview of BCNR.

2. In his petition, LCDR [REDACTED] contends he was unjustly removed from the FY-96 Active Commander Staff Promotion List due to his excessive body fat composition. LCDR [REDACTED] bases this claim on the fact that his promotion was removed by the Secretary of the Navy even as the Secretary was revising the Navy physical fitness policy. This information was obviously available to the Secretary at the time the decision was made; yet the Secretary chose to remove the promotion vice allowing the case to be processed under the new guidance. Prior to the Secretary's action the Judge Advocate General of the Navy determined that the 32-month delay of LCDR [REDACTED] promotion did not violate his rights. As the new physical readiness program did not become effective until 1 May 2000, LCDR [REDACTED] was not eligible for consideration under the new program. His promotion removal was consistent with the policies and regulations in effect at the time of the administrative action, therefore I recommend his record remain unchanged.

3. LCDR [REDACTED] also questions the periodicity of Judge Advocate General's opinion and makes interpretations with regards to the current Navy physical fitness program. It is not in the purview of the Personal Performance and Security Division to comment on either the Judge Advocate General's opinion or the Navy physical fitness policy. I recommend you contact the appropriate office for further clarification.

Subj: LT [REDACTED] C, DC, USNR-R [REDACTED]

4. LCDR [REDACTED] made several claims that require comment. They will be addressed in the order they were presented in reference (a), numbered consistent with his paragraph numbering:

(1) As previously discussed, his rights were not violated.

(2) As previously discussed (and presented in his request), OJAG reviewed this requirement and determined that his rights were not violated by exceeding the 18-month limit for promotion delays.

(3) The amount of time taken to review his case during each step in the promotion removal process is irrelevant to his claim. Processing of his case was not intentionally prolonged but, by his own logic, prolonging his case could have only benefited him by creating the possibility of processing it under the new guidance, which would have resulted in his promotion. Nonetheless, his case was processed according to the guidelines in effect at the time.

(4) LCDR [REDACTED]'s suggestions regarding the Navy's physical readiness program were not considered by those revising the program, nor were they a basis for actions of retribution. He was retained while others were being separated because he challenged each step of the process and great efforts were expended to ensure his rights were not violated.

(5) Whether Petty Officer [REDACTED] benefited from his involvement is certainly not a forgone conclusion.

(6) The details and timing of [REDACTED] case had no impact on the details and timing of the revised physical readiness program. Though processing for administrative separation due to failure of the physical readiness test was ended, the other administrative consequences were not arbitrary. The intention of the new program is to motivate members to be physically fit through serious administrative consequences for failure to do so. His case was not strange, in that all officers whose promotions are delayed due to failure of physical readiness tests are retained on active duty until they pass the test or twice fail to select for promotion.

(7) Entries into [REDACTED] service record were handled in the same manner as the other officers in his community. The proceedings of the selection board are not made public, and there is no requirement to make known to him the reason the board did not select him. Whatever the reason, his second failure to select for promotion mandated his separation under the rules of DOPMA.

(8) [REDACTED]'s promotion had already been removed when the new instruction was issued. Again, his promotion removal was appropriately processed under the guidelines that existed at that time. Whether or not he would have been promoted had he remained on the selection list is a moot point.

Subj: LT [REDACTED], DC, USNR-[REDACTED]

(9) Whenever new standards are provided there must be an effective date for those standards. Though senior Navy leadership had a vision of the new standards, they also knew that his case was being processed before those standards would become effective. As such, his case was processed under the standards that were in effect.

(10) [REDACTED] was not retained "because of the critical shortage of Oral and Maxillofacial Surgeons." He was retained because physical readiness failure was ended as a basis for his processing for separation. He was offered continuation on active duty, but he chose separation.

(11) All of the information [REDACTED] as provided in this request was available at the time his case was processed, and considered in making the decision. His rights were not violated. His promotion should not be restored. He should not be returned to active duty and his pay and bonuses should not be restored.

[REDACTED]
Commander, U.S. Navy
Director, Personnel Performance &
Security Division (PERS-83)