



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

LCC:lc  
Docket No.4807-01  
4 October 2001

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

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

Encl: (1) DD Form 149 w/attachments  
(2) Leave & Earnings Statement  
(3) Para 2, Marine Corps Promotion Manual  
(4) CMC memorandum 1400/3 MMPR-2, 14 Aug 01

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 Petitioner was promoted to paygrade E-3 effective 1 March 1989 prior to receiving office hours and to be promoted to paygrade E-4 prior being discharged in January 1992.

2. The Board, consisting of Messrs. Brezna, Milner, and Ms. McCormick reviewed Petitioner's allegations of error and injustice on 11 September 2001 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.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and justice, finds as follows:

a. Petitioner was scheduled to be promoted to paygrade E-3 effective 1 March 1989. Enclosure (2) shows that his paygrade was changed from E-2 to E-3 on his Leave and Earnings Statement (LES), effective 1 March 1989 and he received pay as an E-3 for 22 days.

b. On the evening of 1 March 1989 Petitioner was at the Enlisted, "E", club at Student Company "A", Schools Battalion and resisted apprehension by a Gunnery Sergeant. He was charged for being drunk and disorderly, and with the intent to defraud by falsely pretending to be of legal drinking age at the "E" Club.

c. Petitioner's commanding officer administratively reduced him from E-3 to E-2 and then awarded nonjudicial punishment (NJP) which reduced him from E-2 to E-1.

d. CMC, MMPR-2's rationale for the administrative reduction to E-2 was that Petitioner had never received a promotion warrant and therefore had not been promoted to E-3. In accordance with the Marine Corps promotion manual, which is attached as enclosure (3), unless the commanding officer identifies a Marine as "NOT REC PROM" on the unit diary by the 15th of the month prior to the effective date of promotion, the promotion will be effective with a date of rank and effective date as of the 1st day of the month when the Marine was selected.

e. The record contains a diary entry showing promotion to E-3 which was posted in Defense Finance Accounting System (DFAS) Kansas City. Petitioner was paid as an E-3 for 22 days. He was administratively reduced to E-2 and at NJP was reduced to E-1. The LES obtained from DFAS Kansas City reflects that the Petitioner's paygrade went from E-2 to E-3 then reverted back to E-1 during the month of March 1989.

f. The Petitioner maintains that he was actually promoted to E-3 and received the pay of an E-3 and should not have been administratively reduced. The offense for which he received NJP did not occur until 2330 hours, on 1 March 1989, after he had been promoted to E-3.

g. In correspondence attached as enclosure (4), the office having cognizance over the subject matter involved in Petitioner's application, has commented to the effect that the request does not have merit. Headquarters CMC, MMPR-2 states that Petitioner's promotion was not effective until he actually had his promotion warrant presented to him.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (4), the Board finds the existence of an injustice warranting the requested relief. In this connection, the Board finds that the Petitioner had actually been promoted to paygrade E-3 and should have then been reduced at nonjudicial punishment from paygrade E-3 to paygrade E-2 and not reduced to paygrade E-1.

Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was promoted to paygrade E-3 effective 1 March 1989.


b. At the nonjudicial punishment on 24 March 1989 Petitioner was reduced in rate from paygrade E-3 to paygrade E-2 vice being reduced from paygrade E-2 to paygrade E-1

c. Petitioner was promoted to paygrade E-3 effective 1 December 1989.

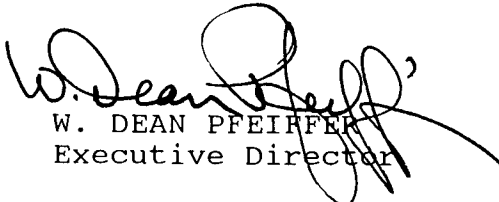
d. That part of the request to be promoted to paygrade E-4 is denied. Petitioner's cutting score was 1502 and when we add 25 points for the additional time in grade by promoting the Petitioner to E-3 effective 1 December 1989 he does not meet the cutting score to be promoted to paygrade E-4. The cutting score to be promoted to paygrade E-4 in August 1990 was 1623, November 1990 - 1687, February 1991 - 1572, May 1991 - 1637, August 1991 - 1694, and November 1991 - 1693.

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.

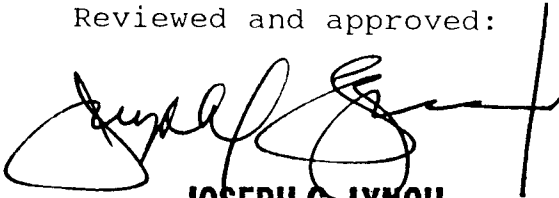
ROBERT D. ZSALMAN  
Recorder

  
G. L. ADAMS  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:



**JOSEPH G. LYNCH**  
Assistant General Counsel  
(Manpower And Reserve Affairs)

DEC - 5 2001