



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

HD:hd
Docket No: 06208-00
28 August 2001

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

Subj: LT [REDACTED], CHC, USNP [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 6 Sep 00 w/attachments
(2) PERS-311 memo dtd 30 Nov 00
(3) Pers 85 memo dtd 2 Mar 01
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that that he be promoted to lieutenant commander with his peers. He also impliedly requested that the applicable naval record be corrected by removing his failures of selection by the Fiscal Year (FY) 00 and 01 Staff Lieutenant Commander Selection Boards, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of lieutenant commander as an officer who has not failed of selection to that grade. After he applied to this Board, he also failed by the FY 02 Staff Lieutenant Commander Selection Board. The Board did not consider his request for promotion, as he has not been selected by a duly constituted officer promotion selection board.

2. The Board, consisting of Messrs. Cooper, Swarens and Taylor, reviewed Petitioner's allegations of error and injustice on 23 August 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 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. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that his fitness reports for 1 February 1998 to 31 January 1999 and 1 February 1999 to 31 January 2000, both of which recommended him for promotion, were not available to "the Selection Board for Lieutenant Commander." He says he signed these reports in February 1999 and 2000, in sufficient time for consideration by the selection boards for both years; that "After the Selection Boards had met both years," the secretary of the commanding officer who had submitted the reports requested that he sign the reports again, because the reports he had signed before "had been sent back from BUPERS [Bureau of Naval Personnel] or wherever they had been sent because of some discrepancy"; that he signed them a second time; and that he was told to record the same date on which he had originally signed.

d. At enclosure (1), Petitioner provided two different sets of fitness report copies for the periods in question. The first set matches the reports now on file in his record. The second set is identical, with the same signature dates for both the reporting senior and Petitioner, except the dates in the first set look slightly different; block 20 ("Physical Readiness") of the report for 1 February 1998 to 31 January 1999 in the first set shows "E/WS" (exempt from physical readiness test/within physical readiness standards), while the corresponding entry in the second set is "N/A" (not applicable); and the report for 1 February 1999 to 31 January 2000 in the first set shows the peer ranked below Petitioner had a promotion recommendation of "Must Promote" (second best), while the second set shows this officer marked "Promotable" (third best).

e. Copies of Petitioner's fitness reports for 1 February 1998 to 31 January 1999 and 1 February 1999 to 31 January 2000, as they now appear in his naval record, are at Tabs A and B, respectively. Both were from the same reporting senior at the same station, documenting Petitioner's performance as a chaplain in his present grade of lieutenant. The narratives of both reports were entirely favorable. The report for 1 February 1998 to 31 January 1999 assigned Petitioner one mark of "5.0" (highest), two of "4.0" (second best) and three of "3.0" (third best); and it gave him a promotion recommendation of "Must Promote," with no other officer compared with him. This report reflects that both the reporting senior and Petitioner signed on 9 February 1999. The report for 1 February 1999 to 31 January 2000 assigned him two marks of "5.0," two of "4.0" and two of "3.0"; and it gave him a promotion recommendation of "Early Promote" (highest), with one peer compared with him, rated below him as "Must Promote." This report reflects that both the reporting senior and Petitioner signed on 15 February 2000.

f. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over officer fitness reports, stated that the report for 1 February 1998 to 31 January 1999 was received and placed in Petitioner's digitized record on 5 August 1999; that the FY 00 selection board convened on 24 May 1999 and adjourned 4 June 1999; and that liaison with Selection Board Support (PERS-32) indicated that the report was requested and received on 20 May 1999. PERS-311 stated that the report for 1 February 1999 to 31 January 2000 was received and placed in Petitioner's digitized record on 4 December 2000; that the FY 01 selection board convened on 15 May 2000 and

adjourned 2 June 2000; and that liaison with Selection Board Support indicated the report was requested and received on 15 May 2000.

g. In correspondence at enclosure (3), PERS-85, the NPC office with cognizance over officer promotions, recommended denying Petitioner a special selection board (he did request such relief). They stated review of his record before the FY 00 selection board indicated the fitness report for 1 February 1998 to 31 January 1999 was not available to the board; and that review of his record before the FY 01 board indicated the report for 1 February 1999 to 31 January 2000 was received and placed into his record on 16 May 2000, one day after the board convened, "therefore possibly not being available for review by the board." They further stated "Although [Petitioner's] failure to select may be attributed to the missing fitness reports, [he] does not prove any effort was made to check and correct his record prior to either board." They stated it is reasonable to consider that a lieutenant who fails of selection would make every effort to ensure a correct record for the next promotion board, and that neither board file indicated Petitioner sent any correspondence to correct the problem with his record. PERS-85 concluded that he did not exercise reasonable diligence.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting removal of all Petitioner's failures of selection for promotion.

In light of the information provided by PERS-85, they find that his fitness report for 1 February 1998 to 31 January 1999 was not available to the FY 00 promotion board. Notwithstanding the PERS-85 position that he failed to exercise reasonable diligence, they find it was reasonable for him to presume this report would be provided to the promotion board. They are unable to find the inclusion of what would have been a recent favorable report in his record would not have enhanced his chances for selection, particularly in light of the PERS-85 statement that his failure to select may be attributed to an incomplete fitness report record. Finally, they find that his later failures of selection for promotion should be removed as well, to restore him to the status he enjoyed before the FY 00 board as not having failed of selection.

In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's record be corrected so that he be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

b. 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.

c. 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.

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

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

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

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

Joseph G. Lynch

NOV 28 2001

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



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

6209-01
1610
PERS-311
30 November 2000

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

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: L [REDACTED], USN; [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests to be promoted with his peers due to missing fitness reports for the FY-00 and FY-01 Lieutenant Commander selection boards.

2. Based on our review of the material provided, we find the following:

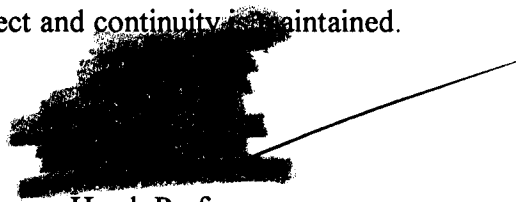
a. A review of the member's headquarters record revealed the fitness report for the period 1 February 1998 to 31 January 1999 and 1 February 1999 to 31 January 2000 to be on file. Both reports are signed by the member acknowledging the contents of each report and his right to submit a statement. The member did not desire to submit a statement.

b. The member alleges the fitness reports for the period 1 February 1998 to 31 January 1999 and 1 February 1999 to 31 January 2000 were not available to the Lieutenant Commander selection board for FY-00 and FY-01.

c. The fitness report for the period 1 February 1998 to 31 January 1999 was received and placed in the member's digitized record on 5 August 1999. The FY-00 Lieutenant Commander selection board convened on 24 May 1999 and adjourned 4 June 1999. Liaison with Selection Board Support (PERS-32) indicated the report was requested and received 20 May 1999.

d. The fitness report for the period 1 February 1999 to 31 January 2000 was received and placed in the member's digitized record on 4 December 2000. The FY-01 Lieutenant Commander selection board convened on 15 May 2000 and adjourned 2 June 2000. Liaison with Selection Board Support (PERS-32) indicated the missing report was requested and received 15 May 2000.

3. The member's record is correct and continuity maintained.



Head, Performance
Evaluation Branch



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

5420
Pers 85
02 Mar 01

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: L [REDACTED] USNR, [REDACTED]

Ref: (a) SECNAVINST 1401.1B

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LT [REDACTED] request for a special selection board.
2. A review of [REDACTED]'s record before the FY-00 Lieutenant Commander Chaplain Corps Promotion Selection Board indicated that the 1 Feb 98 to 31 Jan 99 fitness report was not available to the board for review. A review of the member's record before the FY-01 board indicated that the 1 Feb 99 to 31 Jan 00 fitness report was received and placed into the member's record on 16 May 00, one day after the board convened, therefore possibly not being available for review by the board.
3. Although [REDACTED]'s failure to select may be attributed to the missing fitness reports, the member does not prove any effort was made to check and correct his record prior to either board. It is reasonable to consider that a Lieutenant who fails to select to Lieutenant Commander would make every effort to review and correct his record prior to the next board. Neither board file indicated the member sent in correspondence in attempts to correct the problem. Per ref (a), 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. [REDACTED] did not exercise reasonable diligence.
4. Per ref (a), a special selection board is not warranted. Recommend disapproval of [REDACTED] BCNR request.



BCNR Liaison, Officer Promotions
And Enlisted Advancements Division