



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

LCC:lc
Docket No. 9317-02
21 August 2003

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: ~~CVSCE [REDACTED]~~
Review of naval record

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

Encl: (1) DD Form 149 w/attachments
(2) Explanation of Promotion Zones
(3) CMC, RAP ltr of 3 Jan 02
(4) Para 3602, MCO P1400.32C
(5) CMC, MMPR ltr of 15 Jan 03
(6) Petitioner's Rebuttal to the advisory opinion

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, the applicable naval record be corrected to show that he was entitled to remedial consideration for promotion to paygrade E-8 for the CY 2001 Reserve Staff Noncommissioned Officer Selection Board.

2. The Board, consisting of Messrs. Agresti, Beckett, and Pfeiffer reviewed Petitioner's allegations of error and injustice on 29 July 2003 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. Prior to filing enclosure (1) with this Board, Petitioner exhausted all administrative remedies afforded under existing law and regulations within the Department of the Navy.

b. Petitioner was considered for promotion to paygrade E-8 by the CY 2001 Reserve Staff Noncommissioned Officer selection board. Unfortunately the in zone promotion zone was inflated and more Marines were considered than should have been which caused a much lower promotion opportunity. The Marine Corps guarantees that each Marine as a minimum will receive a 60% opportunity for promotion to E-8.

c. Marines are considered by promotion boards in three separate zones based on date of rank (DOR) and active duty base date (ADBD). See enclosure (2).

d. The date for the floor of the "in zone" population for MOS 8412 was incorrectly entered: (e.g. 19980102 was transposed to 19981002), and transmitted to MMPR, the office within the Marine Corps that is responsible for promotion boards.

e. The error resulted in an expansion of the "in zone" population by nine months. As a result, Marines that should have been considered in the "below zone" population were erroneously considered and promoted "in zone".

f. Due to the inflation of the "in zone" population, Marines that should have had a 60% opportunity for promotion have been passed over. The Marines considered for promotion for the CY 2001 Reserve Staff Noncommissioned Officer Selection Board were given only a 41.6% promotion opportunity when the Marine Corps guidelines guarantee a minimum of 60% opportunity for promotion to E-8.

g. Commandant of the Marine Corps, Reserve Affairs Personnel Plans and Policy Branch (CMC, RAP), the office responsible for establishing the promotion criteria for the active reserve master sergeants, in its letter of 29 November 2001, recommended that the "pass" be removed from the record and that each Marine considered in the "in zone" and not selected for promotion be given remedial consideration for promotion. See Enclosure (2).

h. CMC, RAP, in its letter of 3 January 2002, made a different recommendation and advised that the individuals considered but not selected for promotion should have the "pass" removed from their record but should not be given remedial consideration for promotion. See Enclosure (3).

i. Paragraph 3602, MCO P1400.32C list examples that may warrant remedial consideration. See enclosure (4). Inflation of the promotion zone is not listed as one of the reasons for remedial promotion nevertheless when the zone has been increased through administrative error such as here, Petitioner argues that he should be given remedial consideration for promotion with the correct zone thereby giving him a 60% promotion opportunity.

j. In correspondence attached as enclosure (5), the office having cognizance over the subject matter involved in Petitioner's application recommended denial, commenting that Petitioner did not meet the requirements for remedial consideration for promotion. It also commented that the Marine

Corps message which guarantees Marines a 60% minimum promotion opportunity to E-8 did not apply to Reserve Marines.

k. CMC, letter, 1400, RAP-36, 3 January 2002, addresses the issue of the inflated promotion zone and states that the promotion opportunity for reserves for E-8 should have been 60% but for the error in transposing the ending date.

l. In rebuttal to CMC, letter, MMPR-2 of 15 January 2003, Petitioner asserts out that he should receive remedial consideration under the provisions of the MCO P1400.32C, because the consideration zone was not correct. Additionally he asserts that reserves are also guaranteed a promotion opportunity of 60% for consideration to E-8. See Enclosure (6)

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (5), the Board finds the existence of an injustice warranting the requested relief. In this connection, The Board concludes that Petitioner should receive remedial promotion for the CY 2001 based on the Marine Corps guarantee that Marines being considered for E-8 be given a 60% promotion opportunity.

Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

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

a. Petitioner will be given remedial consideration for promotion to paygrade E-8 for the CY 2001.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

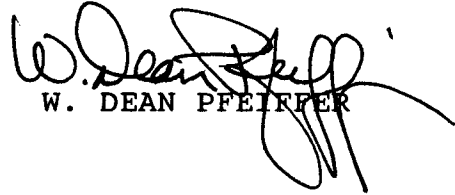
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Boards proceedings in the above-entitled matter.

ROBERT D. ZSALMAN
Recorder

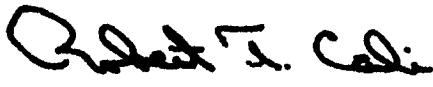

G. L. ADAMS
Acting Recorder

Docket No. 9317-02

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


W. DEAN PFEIFFER

Reviewed and approved:


9-8-03