

DEPARTMENT OF THE NAVY

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

BJG

Docket No: 3345-03 10 September 2003

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: USMCP.

REVIEW OF NAVAL RECORD

Ref:

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

Encl: (

(1) DD Form 149 dtd 11 Apr 03 w/attachments

(2) HQMC CMT memo dtd 20 Aug 03

(3) 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, in effect, that the applicable naval record be corrected by removing her failures of selection before the Fiscal Year (FY) 1997 and 1998 Reserve Captain Selection Boards. She also requested setting aside her 1 April 1998 discharge from the Marine Corps Reserve, which was by reason of of her two failures of selection for promotion, thereby retroactively reinstating her to the Individual Ready Reserve (IRR); and filing a memorandum explaining the break in her activity from 1 April 1998 to the date of her restoration.
- 2. The Board, consisting of Mses. Gilbert and Nofziger and Mr. Grover, reviewed Petitioner's allegations of error and injustice on 5 September 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
- b. In correspondence attached as enclosure (2), the HQMC office having cognizance over the subject matter of Petitioner's request to strike her failures of selection for promotion has commented to the effect that this request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the requested relief.

The Board agrees with the advisory opinion in finding that Petitioner's failures of selection to captain should be removed. As her discharge was based on the failures of selection, the Board finds that removing the failures of selection requires setting aside her discharge as well. The Board finds an explanatory memorandum will alleviate the harm to her from her long break in service.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by removing her failures of selection by the FY 1997 and 1998 Reserve Captain Selection Boards.
- b. That Petitioner's record be corrected further to show that she was not discharged from the Marine Corps Reserve on 1 April 1998, but served continuously after that date; and that she be reinstated to the Marine Corps Reserve accordingly, in the same grade and status in the IRR she held when she was discharged.
- c. That there be inserted in Petitioner's naval record, at an appropriate location, a memorandum containing relevant identifying data and including the following language:

Subject officer was discharged from the Marine Corps Reserve effective 1 April 1998. Subsequently, this discharge was voided by order of the Secretary of the Navy. Since subject officer was discharged by reason of error and through no fault of her own, and since this discharge has now been voided, it is directed that she not be penalized in any way by reason of her inability to serve while the discharge was in effect.

- d. 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.
- e. 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. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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

Jordan S. Broken

Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

W. DEAN PFEIFI

Executive Director



DEPARTMENT OF THE NAVY HEADQUARTERS UNITED STATES MARINE CORPS 3280 RUSSELL ROAD QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1070 CMT 20 Aug 2003

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

Subj: RESERVE AFFAIRS ADVISORY OPINION ON BCNR APPLICATION;

CASE OF FIRST LIEUTENANT

Ref: (a) First Lieutenant DD Form 149 dtd 10 Apr 2003

- 1. This office has reviewed reference (a) and recommends approval of First Lieutenant request for removal of the two failures of selection to Captain from her service record. The below justification is provided.
- 2. As stated in reference (a) First Lieutenant as never aware of the fact that she had been passed over for Captain nor the requirement of submitting a promotion package. During two previous attempts in re-affiliation with the Reserves neither of these facts were brought forth.
- 3. The reason First Lieutenant only has one fitness report in grade was due to her having to request an early separation to pursue an undiagnosed medical problem. This condition was later determined to be endometriosis which is now benign. This medical situation should not be held against the Marine.
- 4. Should the BCNR remove the two failures of selection, she intends to request reappointment in the Marine Reserves.

5. Point of contact 🎬

Director Reserve Affairs Division

DEPARTMENT OF THE NAVY BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) PERFORMANCE SECTION 2 NAVY ANNEY SHITE 2422

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MEMORANDUM FOR THE RECORD

DATE: 3SEP03

DOCKET NO.

PETITIONER (PET

PARTY I CALLED: PET

WHAT I SAID: I ASKED PET TO CLARIFY HER REQUEST.

WHAT PARTY SAID: PET STATED THAT SHE WANTED HER DISCHARGE OF 1APR98 SET ASIDE, REINSTATEMENT IN THE USMCR RETROACTIVELY, AND A MEMO FILED EXPLAINING HER BREAK IN SERVICE.

BRIAN J. GEORGE