



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

JSR
Docket No. 11597-09
4 February 2010

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 30 Oct 09 w/attachments
(2) HQMC CMT memo dtd 19 Jan 10
(3) HQMC MMSR-5 memo dtd 29 Jan 10 w/encl
(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, in effect, that his naval record be corrected by removing his failure of selection before the Fiscal Year (FY) 2008 Reserve Major Selection Board and by implication, his failure of selection by the FY 2010 Reserve Major Selection Board, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of major as an officer who has not failed of selection to that grade. Because of the failures of selection for promotion, he was subject to involuntary discharge from the Marine Corps Reserve. He resigned his Reserve commission effective 1 November 2009.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 4 February 2010, 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 enclosure (2), the Headquarters Marine Corps (HQMC) Career Management Team has commented to the effect that Petitioner should have been ineligible for consideration by the FY 2008 Reserve Major Selection Board, convened on 23 January 2007, as he should have been placed on the Inactive Status List (ISL) effective 8 December 2004, rather than 1 May 2007. He was eligible for consideration by the FY 2010 Reserve Major Selection Board, convened on 27 January 2009, as he had been off the ISL for over the requisite one-year period when that promotion board met.

c. In enclosure (3), the HQMC Separation and Retirement Branch advised that Petitioner was on the ISL from 1 May to 19 September 2007, so he was properly considered and failed of selection by the FY 2008 and 2010 Reserve Major Selection Boards; and that his two failures of selection for promotion rendered him subject to attrition from the Marine Corps Reserve.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds an error and injustice warranting full relief. The Board finds Petitioner should have been placed on the ISL on 8 December 2004, rather than 1 May 2007, and therefore he should not have been eligible for the FY 2008 Reserve Major Selection Board. The Board further finds his FY 2010 failure should be removed as well, since this is necessary to restore the status he should have enjoyed before that promotion board as an officer who had not failed of selection for promotion. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was placed on the ISL on 8 December 2004, rather than 1 May 2007.

b. That his record be corrected further so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade.


c. That his record be corrected further to show that he was not discharged from the Marine Corps Reserve on 1 November 2009, but served continuously after that date; and that he be reinstated as a captain in the Marine Corps Reserve accordingly.

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. 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
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 PFEIFFER
Executive Director