



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

JSR
Docket No. 03806-10
6 May 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 5 Jan 10 w/attachments
and Subject's ltr dtd 2 Apr 10 w/encl
(2) HQMC CMT memo dtd 28 Apr 10
(3) HQMC MMPR-1 e-mail dtd 30 Apr 10
(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 the applicable naval record be corrected to show the lineal position, date of rank, and effective date in the grade of lieutenant colonel Petitioner would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 2010 Active Reserve (AR) Lieutenant Colonel Selection Board, rather than the FY 2011 AR Lieutenant Colonel Selection Board. He also impliedly requested removing his failure of selection by the FY 2010 AR Lieutenant Colonel Selection Board.

2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 May 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. After Petitioner had failed of selection by the FY 2010 AR Lieutenant Colonel Selection Board, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing the fitness report for 1 July 2005 to 31 May 2006. Copies of the PERB report and the fitness report are in enclosure (1). The FY 2011 AR Lieutenant Colonel Selection Board, which considered Petitioner with a corrected fitness report record but status as an officer who had failed of selection to lieutenant colonel, selected him. He was promoted with a date of rank and effective date of 1 April 2010.

c. In correspondence attached as enclosure (2), the HQMC Career Management Team commented to the effect that Petitioner's express request to backdate his promotion to lieutenant colonel and, by implication, his implied request to remove his failure of selection by the FY 2010 AR Lieutenant Colonel Selection Board have merit and warrant favorable action.

d. In enclosure (3), the HQMC Promotion Branch advised that 1 October 2009 is the date of rank and effective date Petitioner would have been assigned, had he been promoted pursuant to selection by the FY 2010 AR Lieutenant Colonel Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing his failure of selection by the FY 2010 AR Lieutenant Colonel Selection Board.

b. That his record be corrected further to show his date of rank and effective date in the grade of lieutenant colonel as 1 October 2009, rather than 1 April 2010; and that his lineal precedence be adjusted accordingly.

c. 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.

d. 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.

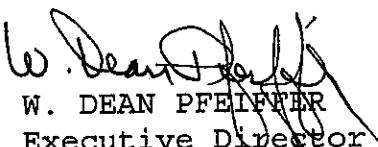
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN
Recorder

JONATHAN S. RUSKIN
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