



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

BAN
Docket No. 06253-10
2 March 2011

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]
[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC memo 1430 Ser 811/046 of 19 Jan 11
(3) JCAVS Person Summary
(4) NAVPERS 1070/613 of 7 Feb 08
(5) MILPERSMAN 1530-010 of 13 Sep 06
(6) Navy Stats for CTI2/E-5 for Cycle 199
(7) Email between [REDACTED], DONCAF, Code 24
and [REDACTED], BCNR on 4 Jan 11
(8) Excerpts from 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 advancement to E-4 pursuant to his Advance Technical Field Contract and a retroactive advancement to E-5 from the March 2008 Navy-wide advancement examination.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios, reviewed Petitioner's allegations of error and injustice on 7 February 2011 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. The Board also considered an advisory opinion furnished by the Naval Personnel Command (NPC) attached as enclosure (2) that recommended no relief be granted.

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. Prior to entering active duty, Petitioner submitted the required paperwork for a National Agency Check with Local Agency Check and Credit Check (NACLC), a basic security requirement for entry into United States military service. Petitioner entered active duty as an E-3 with a contract program guarantee for Advanced Technical Field/Cryptologic Technician-Interperative (ATF/CTI), enclosure (1).¹ On 21 November 2007, upon completion of the Defense Language Institute (DLI) school (Group 4-Korean), Petitioner was not in receipt of his security clearance; therefore, he was placed on a clearance hold at DLI in Monterey, California from 21 November 2007 to 5 February 2008. He finally received his security clearance on 5 February 2008, enclosure (3), and was promoted to E-4/CTI3 on 16 February 2008, with a Time In Rate (TIR) date of 1 January 2008, enclosure (4).

c. Petitioner claims that it was through no fault of his own that he didn't receive his security clearance before the completion of DLI school. He further claims that if he had been advanced on 21 November 2007, (graduation date) pursuant to the MILPERSMAN 1510-030, enclosure (5), instead of 16 February 2008, his TIR date would have also changed to 1 July 2008, thereby making him eligible for the March 2008, advancement examination for E-5/CTI2, six months sooner. Moreover, because the March 2008 E-5 advancement exam cycle had a 100% advancement rate, he contends he should be advanced to E5 also.²

d. To support his claim, Petitioner submits enclosure (7), an email from the Department of the Navy Clearance Adjudication Facility (DONCAF), which states that the failure to have a clearance was not the member's fault and that for some unknown reason, the clearance information was not entered into Joint Personnel Adjudication System (JPAS). DONCAF states that Petitioner was granted an eligibility for Top Secret/Security Clearance Interim (SCI) based on an Single Score Background Information (SSBI) that was completed on 24 July 2006, but was never entered into JPAS. However, once the error became known, the entry was corrected and entered on 5 February 2008.

¹ ATF/CTI program authorizes a member to be advanced to E-4 upon completion of school. In member's case, since he was a CTI, his school was the Defense Language Institute for Korean.

² Petitioner has participated in the September 2008, March 2009, September 2009, March 2010, and September 2010, Navy-wide advancement examinations for E-5/CTI2 and has Passed But Not Advanced (PNA'd) on each cycle exam.

e. By enclosure (2), the Naval Personnel Command (NPC) recommends that only partial relief be granted. NPC relying on advice from CNO N132, recommends that Petitioner be advanced from E-3 to E-4 on 21 November 2007, with a TIR date of 1 July 2008, due to a delay in obtaining a security clearance that was beyond his control. However, NPC does not support Petitioner's request to be advanced from E-4 to E-5, based on the following rationale: 1) it is not a foregone conclusion that he would have passed the E-5/CTI2 Navy-wide examination, 2) based on his evaluation average over the past four E-5 examinations, there is no guarantee that he would have received the commanding officer's recommendation to take the E-5/CTI2 examination back in March 2008, 3) the CTI detailer states that the CTI Group 4 is extremely overmanned, which may create a community management issue within the CTI Group 4 if he is advanced now, and 4) granting relief may take away an advancement quota in spring 2011, for someone who might be a better candidate.

CONCLUSION:

Upon review and consideration of all the evidence of the record, the Board concludes that Petitioner's request warrants favorable action. The Board concurs with NPC that it was through no fault of the Petitioner that he did not receive his security clearance before graduation from DLI school and that he should be advanced to E-4/CTI3 effective 21 November 2007, with a TIR date of 1 July 2008. However, the Board agrees with Petitioner that he also would have been eligible to take the E-5/CTI2 Navy-wide advancement exam in March 2008. The Board found that a number of factors militated towards granting relief, including the following: The delay in entering his adjudicated clearance was not attributable to him, the delay acted to Petitioner's detriment because he lost an opportunity to participate in an examination cycle that he would otherwise have been eligible for.³ Accordingly, the Board concludes that the record should be corrected to show that Petitioner is advanced to E-4/CTI3 on 21 November 2007, and to E-5/CTI2 from the March 2008 Navy-wide advancement exam with an effective date of 16 December 2008, and a TIR date of 1 July 2008.

³ The Board noted that Petitioner's evaluations show that he has been consistently recommended for retention in a "Promotable" (or higher) category since 2008. In June 2010, he was recommended for early promotion. Thus, the Board did not share the concerns of N132 that Petitioner may not have been able to secure an advancement recommendation in 2008.

RECOMMENDATION:

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

a. Petitioner is advanced to E-4/CTI3 effective 21 November 2007, with a Time In Rate date of 1 July 2007.

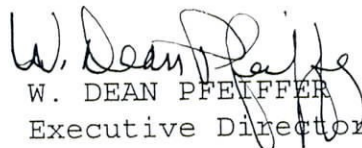
b. Petitioner is further advanced to E-5/CTI2 effective 16 December 2008, with a Time In Rate date of 1 July 2008.

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 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.

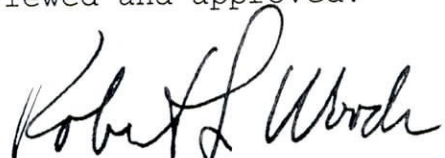
ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

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


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:

 3/8/11
ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000