



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

JSR  
Docket No. 07430-10  
14 October 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 1 Jul 10 w/attachments  
(2) HQMC MMPR memo dtd 25 Aug 10  
(3) HQMC MMOA-4 memo dtd 6 Oct 10  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), counsel for 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 captain Petitioner would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 2009 Captain Selection Board, rather than the FY 2011 Captain Selection Board.

2. The Board, consisting of Messrs. Butherus, Garst, and Sproul, reviewed Petitioner's allegations of error and injustice on 14 October 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 Petitioner's previous case, docket number 02457-09 (copy of Report of Proceedings in enclosure (1)), in view of the action by the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board to direct removing an adverse fitness report from his record, this Board directed correcting his record so that he would be considered by the earliest possible selection board convened to consider officers of his category for promotion to captain as an officer who had not failed of selection for promotion to that grade. On the basis of that action, his failures of selection by the FY 2009 and 2010 Captain Selection Boards were removed. He was selected by the FY 2011 Captain Selection Board and promoted with a date of rank and effective date of 1 July 2010.

c. In enclosure (2), the HQMC Promotion Branch advised that 1 July 2008 is the captain date of rank and effective date Petitioner would have received, had he been promoted pursuant to selection by the FY 2009 Captain Selection Board.

d. In enclosure (3), the HQMC Officer Counseling and Evaluation Section, Personnel Management Division has commented to the effect that Petitioner's request has merit and warrants favorable action, specifically, adjusting his captain date of rank (and by implication, effective date) to 1 July 2008.

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, where appropriate, to show his date of rank and effective date in the grade of captain as 1 July 2008, rather than 1 July 2010; and that his lineal precedence be adjusted accordingly.


b. 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.

c. 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.

  
For W. DEAN PFEIFFER  
Executive Director