



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD SUITE 1001  
ARLINGTON VA 22204-2490

BAN  
Docket No. NR03163-13  
12 September 2013

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 w/attachments  
(2) NPC memo 1430 Ser 811/210 of 24 Jul 2013  
(3) NAVPERS 1626/7 Report and Disposition of Offenses dtd  
11 May 2011  
(4) NAVPERS 1616/26 dtd 30 Jun 2011  
(5) Naval Message 051945Z AUG 11  
(6) NAVPERS 1616/26 dtd 12 Mar 2012  
(7) Defense Finance and Accounting Service Military Leave  
and Earning Statement dtd 1-31 Aug 2011  
(8) Commanding Officer's Recommendation Letter 1430 Ser  
DDG 110/085 of 15 Mar 2013

1. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that his selection to Chief Petty Officer/E-7 be reinstated effective 16 August 2011.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman and George, reviewed Petitioner's allegations of error and injustice on 20 August 2013 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. In April 2013, Petitioner submitted a request to the Board requesting a reinstatement of his advancement to CPO/E-7, enclosure (1).

c. In January 2010, Petitioner participated in the E-7 Navy-wide advancement examination for Chief Petty Officer (CPO). In May 2010, he was notified that he had become board eligible, and in August 2010, he was selected for CPO/E-7 with an effective date of 16 August 2011.

d. However, on 11 May 2011, before Petitioner's effective date of advancement, he received nonjudicial punishment (NJP) for two specifications of failure to obey a lawful regulation by wrongfully making an unwelcome sexual advance, in that he held a Sailor's hand (E-4) and attempted to kiss her, and by having an unduly familiar relationship with an E-4 (same individual). He was found guilty at NJP and given restriction and extra duty for 45 days, forfeitures of one-half month's pay for two month, and a reduction in rank to E-5 (all suspended for six months), enclosure (3).

e. On 13 May 2011, Petitioner's command submitted a special evaluation documenting the NJP but checked "Progressing" instead of "Significant Problems" as required by the BUPERS Advancement Manual 1430.16F, enclosure (4). In addition, the command failed to provide a page 13 entry withdrawing Petitioner's advancement to CPO. Although the command did send a message to Naval Education and Training Professional Development and Technology Center (NETPDTC) withdrawing Petitioner's advancement recommendation on 5 August 2011, enclosure (5), they failed to correct their error in regards to the evaluation in a timely manner. In September 2011, the command finally corrected their error to Petitioner's evaluation; however, he had already begun receiving E-7 pay on 16 August 2011, enclosures (6) and (7).<sup>1</sup>

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<sup>1</sup> Pursuant to the BUPERSINST 1430.16F, in order to withhold a member's advancement recommendation the command needed to do the following: 1) to issue a page 13 to Petitioner stating that the advancement is being withheld (the page 13 must be signed by the member and the member's commanding officer or officer in charge. The commanding officer's signature may not be delegated. If the member refuses to sign, the signature block will be annotated 'member notified but refused to sign', 2) a message needs to be submitted to the Naval Education and Training Professional Development and Technology Center (NETPDTC) notifying them of the withholding status and 3) A

Petitioner cites this reason as the sole factor to reinstate his advancement to E-7/OSC and has his current commanding officer's support and endorsement, enclosure (8).

f. By enclosure (2), NPC recommends that no relief be granted. NPC reasons that, the Petitioner's previous command who imposed NJP clearly took administrative action in good faith to withhold his advancement, that his command has since corrected his adverse evaluation and correctly removed his recommendation for advancement to E-7.

CONCLUSION:

Upon review and consideration of all the evidence of the record, the Board concludes that Petitioner's request warrants favorable action. The Board believes that due to his inappropriate behavior he received an appropriate punishment by receiving NJP in his official record. However, the Board notes that Petitioner's command did not adhere to the proper procedures that were required by the BUPERSINST 1430.16F in order to properly withhold Petitioner's recommendation for advancement. Furthermore, the Board takes into account Petitioner's strong support from his current command. Therefore, the Board believes that the interests of justice would be better served if Petitioner were reinstated to E-7/OSC from the January 2010 Navy-wide Chief Petty Officer advancement examination and was selected to E-7 with an effective date of 16 August 2011.

RECOMMENDATION:

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

a. That Petitioner be reinstated to pay grade E-7/OSC from the January 2010 Navy-wide Chief Petty Officer examination and selection board, with an effective date of 16 August 2011 and a Time In Rate date of 1 September 2010.

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

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proper evaluation removing advancement recommendation, noting significant problems. "Failure to comply with the required actions prior to the advancement date will result in the member retaining scheduled advancement" (BUPERSINST 1430.16F chapter 7, para. 721).

foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Bronte I. Montgomery*  
BRONTE I. MONTGOMERY  
Acting Recorder

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

*W. Dean Pfeiffer*  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

*Robert L. Woods*

10/01/13

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