



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 03995-99

23 August 1999

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: EX-LT J. [REDACTED], USN [REDACTED]
REVIEW OF NAVAL RECORD (RECONSIDERATION)

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

Encl: (1) Counsel's ltr dtd 9 Sep 98 and
DD Form 149 dtd Sep 98 w/attachments
(2) BCNR file, do. no. 3515-83
(3) PERS-91 memo dtd 14 Jun 99 w/enclosures
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, acting through counsel, filed the documentation at enclosure (1) with this Board requesting, in effect, reconsideration of the Board's decision, on 20 July 1983, to deny his original petition to correct his naval record to reflect he has held a Naval Reserve commission since 1973. The Board's file on his prior case is at enclosure (2). In his application at enclosure (1), he requested that his drill time as an active Naval Reserve lieutenant from 1973 to 1984 be counted toward retirement; that he be promoted to lieutenant commander and commander effective from the time he would have come into the promotion zone; that back pay be computed and paid for every paid drill period where pay was applicable; and that interest be paid on any monies owed at the rate of six percent compounded daily. After the Board's staff had determined the case did not warrant reconsideration, Petitioner's counsel solicited and obtained a favorable advisory opinion from the Navy Personnel Command (NPC), enclosure (3). In light of that opinion, Petitioner's case was reopened. The Board did not consider his request for promotion, since he has not been selected by a duly constituted promotion board.

2. The Board, consisting of Messrs. Bishop, Pfeiffer and Taylor, reviewed Petitioner's allegations of error and injustice on 12 August 1999, 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. On 14 June 1973, Petitioner was discharged from the Regular Navy in the grade of lieutenant. His record does not show he ever received a Naval Reserve commission. Nevertheless, he applied for active Naval Reserve affiliation on 14 July 1973 and drilled, drawing drill pay as a lieutenant. He says he drilled from 1973 to 1984. After the Bureau of Naval Personnel discovered that he had no Naval Reserve commission, they cancelled his orders to a drilling unit effective 21 April 1983, but it was decided that the money he had been paid would not be recouped. He contends he requested a commission and that his record's not reflecting a commission was issued to him is due to no fault of his own.

c. Title 10 of the United States Code, sections 14509 and 14515, require separation of Naval Reserve lieutenants who attain age 60. Petitioner attained age 60 on 22 August 1998. Had he received a Naval Reserve commission on 15 June 1973, he would have been eligible to request transfer to the Retired Reserve on the first day of the month following the month in which he attained age 60, 1 September 1998.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3) and the Board's findings at paragraph 3.c above, the Board finds the existence of an injustice warranting correction of Petitioner's naval record to show he accepted a commission as a lieutenant in the Naval Reserve on 15 June 1973, and was transferred to the Retired Reserve on 1 September 1998 under title 10 of the United States Code, sections 14509 and 14515.

Petitioner may submit documentation of his actual Naval Reserve participation to the Naval Reserve Personnel Center to get appropriate point credit and, if eligible, request retired pay.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected, where appropriate, to show he was commissioned as a lieutenant, United States Naval Reserve on 15 June 1973, and was transferred to the Retired Reserve on 1 September 1998 under title 10 of the United States Code, sections 14509 and 14515.

b. That any material or entries inconsistent with 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 a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

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


JUDY P. ...
Asst. 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.


Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

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PERS-91

1920

14 Jun 99

MEMORANDUM FOR BOARD FOR CORRECTIONS OF NAVAL RECORDS (BCNR)
COORDINATOR (ATTN: [REDACTED])

Subj: FORMER LT [REDACTED] USN [REDACTED]

Ref: (a) PHONCON BCNR [REDACTED] PERS-91D [REDACTED]
4 Jun 99

Encl: (1) NMPC memo to BCNR of 10 Jun 83
(2) [REDACTED] ltr of 2 Jun 99

1. In 1983, PERS-911 responded to a request from BCNR for recommendations in the case of former Lieutenant [REDACTED] USN, 263-52-7959. Enclosure (1) is a copy of our response. The first 3 paragraphs of enclosure (1) provide information that we believe remains correct.

2. [REDACTED] attorney on behalf of [REDACTED] advised us in enclosure (2) that per his phone conversation with [REDACTED] (BCNR) it is appropriate for us to review our earlier response and issue a new advisory letter if warranted. We confirmed this fact per reference (a). Enclosure (2) also forwarded pertinent information including affidavits from witnesses, former Lieutenant [REDACTED] 998 BCNR petition, his 1983 BCNR petition with supporting documents, and his fitness reports. We have reviewed this documentation and determined that a new advisory opinion is warranted.

3. It appears that that former Lieutenant [REDACTED] did not request a reserve appointment at the time of his separation in 1973 based on documentation and our corporate knowledge. [REDACTED]'s separation orders of 9 February 1973 would have directed a reserve appointment had he requested one. His orders make no mention of a reserve appointment. [REDACTED]'s failure to request a reserve appointment was not an anomaly but was rather the norm at that time for officers who were separated from active duty as a result of having twice failed of selection (FOS) for promotion. As a general practice Navy advised officers of the process for obtaining a reserve appointment upon separation from active duty less officers who had twice FOS for promotion. Twice

Subj: FORMER [REDACTED] LEVE, USN [REDACTED]

FOS officers had to identify the process on their own initiative and take the requisite action. We believe that former Lieutenant [REDACTED] was not advised of process and without knowledge of the process was unable to obtain a reserve appointment.

4. Because of several affiliation errors former Lieutenant [REDACTED] was erroneously accessed into the Selected Reserve without holding a Naval Reserve commission. We believe that data entry errors made during his separation processing caused the IMAPMIS database to incorrectly reflect [REDACTED] status as a commissioned officer. Because erroneous gains were made at headquarters and field levels, pay and retirement point capture systems were activated. This allowed former Lieutenant [REDACTED] to continue his active participation in the Naval Reserve for approximately 10 years, until he made a retirement inquiry in 1983. As a result of his inquiry we reviewed his record and discovered that he did not hold a Naval Reserve commission. Because of the errors listed above the normal system checks to correct his erroneous affiliation were basically bypassed.

5. The below listed actions, less item g., should have been accomplished during former Lieutenant [REDACTED] separation from active duty and accession into the Selected Reserve. We believe his problem would have been corrected early in the affiliation process or shortly thereafter had:

a. Former Lieutenant [REDACTED] requested an appointment at the time of his separation or a reappointment after separation.

b. The Naval Reserve activity accessing former Lieutenant [REDACTED] into the Selected Reserve verified proper appointment documents at the time of affiliation.

c. The Naval Reserve activity accessing former Lieutenant [REDACTED] the Selected Reserve forwarded his Ready Reserve Service Agreement request to BUPERS for verification.

d. The active to inactive computer transaction at BUPERS not resulted in a gain in the IMAPMIS database of former Lieutenant [REDACTED]

e. Pay and retirement point capture files not been opened for former Lieutenant [REDACTED]

Subj: FORMER [REDACTED] RESERVE, USN, [REDACTED]

f. BUPERS Naval Reserve Promotions and Naval Reserve Status Branches reconciled the discrepancy between the list of officers eligible for promotion and the IMAPMIS inactive officer master file.

g. Former Lieutenant [REDACTED] his supporting Naval Reserve activity questioned his continued reserve status as a lieutenant after having twice FOS for promotion.

6. Had the procedures at the time of his accession been followed we believe former Lieutenant [REDACTED] affiliation would have been terminated and he would have been advised to seek reappointment in order to affiliate. We further believe his record of performance was sufficient to justify a Naval Reserve appointment at the time of separation as well as a reappointment after separation. Finally we believe that if he had been properly advised former Lieutenant [REDACTED] would either have requested and accepted a reserve commission upon separation or he would have requested, been tendered, and accepted a reappointment after separation.

7. We find that sufficient errors involved in this case unfairly resulted in [REDACTED] being allowed to participate in the Naval Reserve for an extensive period of time without holding a reserve commission. We know of no other case on record regarding commissioned status that has unknowingly gone uncorrected for as long as this one. Our current system checks do not allow accession errors to go uncorrected for more than a few months. We, therefore, recommend that the Board for Correction of Naval Records reopen this case, and in light of the foregoing, rule favorably for the petitioner.

[REDACTED]
Director, Naval Reserve
Personnel Administration Division

JUN 10 1983

MEMORANDUM FOR BCNR COORDINATOR (NMPC-06B)

Subj: Former [REDACTED] USN, [REDACTED]

Ref: (a) Your memo dtd 29 May 83

Encl: (1) BCNR File
(2) Former [REDACTED] microfiche record

1. As requested by reference (a), the following information is provided to assist in responding to the petition of former Lieutenant [REDACTED]

2. A review of former Lieutenant [REDACTED] official record reveals that he was commissioned an ensign in the United States Naval Reserve in May of 1964. He subsequently augmented into the Regular Navy while on active duty, and on 16 January 1973 was advised by the Chief of Naval Personnel of his failures of selection for promotion, requiring his separation from the Navy. In that letter, former Lieutenant [REDACTED] was informed that he was being honorably discharged from the United States Navy with severance pay. No offering of a Naval Reserve commission is mentioned in that correspondence, nor is there any evidence in either his field service record or his official record that he asked for a Naval Reserve commission. His separation orders likewise ordered him discharged from the United States Navy and did not offer him a Naval Reserve commission. On 14 June 1973, former Lieutenant [REDACTED] was discharged from the United States Navy.

3. One month later, former Lieutenant [REDACTED] requested affiliation in the Naval Reserve Program at Naval Air Reserve Unit, Jacksonville, Florida, and through a series of administrative errors, was permitted to do so. His interviewer obviously did not confirm that he held a Naval Reserve commission. Secondly, for reasons unknown, he was erroneously gained to the Inactive Officer Master File as a Naval Reserve officer in good standing. Thirdly, his Ready Reserve Agreement request which is required to be sent to NMPC for status verification and acceptance, remained embedded in his field service record. Lastly, over a ten year period of active participation in drill pay status, record inspection did not disclose his obvious lack of a Naval Reserve commission.

4. These and several similar affiliation errors are cause for concern and have been addressed in an upcoming change to BUPERSINST 5400.42E. These errors, however, as regretted as they are, do not obligate the Navy to grant Naval Reserve commissions to individuals with status simply because they were erroneously permitted to drill. COMPGEN has held on more than one occasion that the individual in such circumstances is considered to be in a "de facto" status and may retain any monies received; however, crediting of retirement points is not authorized. In light of the above action, we do not anticipate the recouping of any monies paid for services rendered while in a drilling capacity.

5. We do not support former Lieutenant [REDACTED] petition for a backdating of a Naval Reserve commission to July 1973, since it was never the intention of the United States Navy to offer him a reserve commission. We also feel he shares equal responsibility for the situation that developed. Despite the fact that he was officially advised, ordered and issued a document confirming discharge, he attempted affiliation shortly after separation. Secondly, he made no attempt at any time to obtain a Naval Reserve commission by petitioning CHNAVPERS for such. Additionally it does not appear that he made a reasonable attempt to question his promotional status as a continuous lieutenant for some 15 + years, which if investigated in a timely manner would have revealed his non-status many years ago. It was not until 1983 when he asked for a statement of service was his case examined and his non-status confirmed.

6. As advised in enclosure (1), former Lieutenant [REDACTED] orders to a Naval Reserve unit have been terminated since he holds no commission and since it was never the intention of the Navy to offer him a reserve appointment. One is not being offered to him at this time, although he may request such a commission through the Navy Recruiting Command as a former member.

7. Enclosures (1) and (2) are returned.

[REDACTED]
Director, Naval Reserve
Personnel Administration Division

[REDACTED]

Captain [REDACTED]

RE: Case of [REDACTED] BCNR docket num [REDACTED]

REQUEST: Review [REDACTED] a Pers-9 New Advisory Letter be sent [REDACTED] at the BCNR.

REFERENCE: Telephone conversation: Attorney [REDACTED] with Att [REDACTED] Assistant Director, Board for Correction of Naval Records, at 1440, 28 May 1999.

ENCLOSURES: To [REDACTED] only.

- (1) Service record and Fitness Reports; [REDACTED]
- (2) Advisory Letter of BuPers (June 10 1983)
- (3) Cover letter to BCNR from Attorney [REDACTED] (September 9, 1998)
- (4) Petition [REDACTED] submitted by Attorney [REDACTED] (September 15, 1998)
- (5) Application for Correction of Military Record (DD form 149) (September 11, 1998)
- (6) Affidavit of [REDACTED] (September 11, 1998)
- (7) Affidavit of [REDACTED] (September 11, 1998)
- (8) Fax copy of Letter of BCNR Denial (dated December 30, 1998, received January 20, 1999)
- (9) Request for Reconsideration (January 25, 1999)
- (10) Summary of previous enclosures One (1) through twenty-nine (29)
- (11) Excerpt from Mimeographed form from [REDACTED] Military Personnel Clerk (September 9, 1973)

→ COPY TO [REDACTED] name [REDACTED] [REDACTED]

Dear [REDACTED]

When [REDACTED]'s request was initially turned down, the BCNR relied heavily upon an Advisory Letter written by BuPers (Enclosure 2). It has come to my attention that the BuPers (Pers-9) policy with regard to record disputes has changed. In 1983, a single missing document was sufficient to refer [REDACTED] request. Today, the appropriate remedy is stated to be to review the file in it's totality and do justice based on the whole record. A PRESUMPTION of REGULARITY should prevail.

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In my phone conversation with attorney [REDACTED] stated that it is perfectly appropriate for us to petition Pers-9 for a new and favorable Advisory Letter. That letter should be addressed directly to Attorney [REDACTED] Assistant Director, Board for Correction of Naval Records. According to Attorney [REDACTED] receipt of such a new Advisory Letter at BCNR would insure that they would review the matter and decide in accordance with BCNR dictates. Hopefully, the decision will be a favorable one.

[REDACTED] served his country honorably, long and well. I hope you can respond to our request and provide Attorney [REDACTED] BCNR the Advisory Letter sufficient to accomplish justice and correct the error. Thank you for any help you can give in this matter.

Very Respectfully,
[REDACTED]
(P)