



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

HD:hd  
Docket No: 08353-01  
13 May 2002

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

Subj: LT [REDACTED], USNR, [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 9 Nov 01 w/attachments  
(2) PERS-911 memo dtd 8 Apr 02  
(3) PERS-80 memo dtd 12 Apr 02  
(4) Memo for the Record dtd 9 May 02  
(5) 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 by changing her grade from lieutenant (pay grade O-3) to lieutenant commander (pay grade O-4).

2. The Board, consisting of Meses. Davies and Gilbert and Mr. Kastner, reviewed Petitioner's allegations of error and injustice on 9 May 2002, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner was commissioned as a lieutenant in the Nurse Corps of the Naval Reserve on 7 August 2001, under the inter-service transfer statute, title 10, United States Code, section 716. She transferred from the Air Force Reserve to the Naval Reserve. At the time of her transfer, she was a selectee for major (pay grade O-4) in the Air Force Reserve, with a projected promotion date of 1 October 2001.

d. In correspondence attached as enclosure (2), PERS-911, the Navy Personnel Command (NPC) office having cognizance over Naval Reserve personnel administration, has commented to the effect that Petitioner's application for "the integration of her promotion into the Naval Reserve Lieutenant Commander promotion list" should be granted. They stated "From the documentation provided in [her application at enclosure (1)], it is apparent the member was given inappropriate counsel as to the timing of her appointment into the Naval Reserve." They further stated "By waiting until 1 October 2001, her Air Force promotion to [major] would have become effective, thus allowing her to be appointed anytime [sic] after that date as a Lieutenant Commander in the Naval Reserve." They recommended that her record be corrected to show that she accepted a Naval Reserve appointment as a lieutenant commander on 2 October 2001, and that the appointment documents reflect a date of rank of 1 October 2001. They stated that this action would allow retroactive appointment as a lieutenant commander and appropriate reimbursement for paid drills performed thus far. They further commented that they would also insure Petitioner's name would be removed from consideration by the upcoming Fiscal Year 03 Naval Reserve Staff Lieutenant Commander Selection Board scheduled for June of this year [24 June 2002].

e. In correspondence attached as enclosure (3), PERS-80, the NPC office having cognizance over reserve officer career progression, has commented to the effect that Petitioner's request "to honor her inter-service transfer appointment to Lieutenant Commander" should be approved. They noted that her acceptance of a 2 October 2001 appointment, per the PERS-911 recommendation at enclosure (2), would place her as a lieutenant commander on entry into the Naval Reserve. They added that "The inter-service transfer agreement would mean [Petitioner] would be brought in as a Lieutenant Commander and would not have to participate in another Lieutenant Commander Promotion Selection Board."

f. The memorandum for the record at enclosure (4) reflects NPC (PERS-8023) has advised that on 7 August 2001, the President's authority to issue a direct commission, under title 10, United States Code, section 12203, as a lieutenant commander in the Naval Reserve had been delegated to the Secretary of the Navy.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinions at enclosures (2) and (3), the Board finds an injustice warranting corrective action. However, they recommend a different remedy from that proposed by the advisory opinions. They find Petitioner's record should be corrected to show that when she was commissioned on 7 August 2001, she was commissioned, under the reserve direct commission statute, in the grade of lieutenant commander, with a date of rank of 7 August 2001.

The Board agrees with the advisory opinions that it is within the Board's authority to show Petitioner entered the Naval Reserve as a lieutenant commander, without correction of her

Air Force record to show she attained the grade of major. They consider the best means of accomplishing this is to create the fiction that she entered the Naval Reserve by way of a direct commission, rather than inter-service transfer. However, they do not agree her record should be corrected to show she did not enter the Naval Reserve until 2 October 2001, as this would take away from her the service she has performed from 7 August 2001 to 1 October 2001, and she did not request this correction. Treating her as having received a direct commission as a lieutenant commander, there would be no need to postdate her commissioning.

The Board recognizes that Petitioner would not have been promoted to major in the Air Force Reserve until 1 October 2001; and that this would have been her lieutenant commander date of rank, had she delayed her inter-service transfer as she should have. Nevertheless, consistent with their position that the legal basis for her commissioning should be changed from inter-service transfer to direct commission, they conclude she may be assigned a date of rank other than 1 October 2001. They conclude that the appropriate date of rank in her case would be 7 August 2001, the actual date she was commissioned in the Naval Reserve. Although assigning her this date of rank leaves her in a better position than she would have had if her injustice had not occurred, they note that 7 August 2001 is the latest lieutenant commander date of rank she could properly be assigned, without postdating her commissioning in that grade.

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

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that when she was commissioned in the Nurse Corps of the U. S. Naval Reserve on 7 August 2001, the authority for her commission was title 10, United States Code, sections 12203 and 1552, rather than section 716; that she was commissioned in the grade of lieutenant commander, rather than lieutenant; and that she was assigned a lieutenant commander date of rank of 7 August 2001, with corresponding adjustment of her lineal precedence.
- 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. 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.

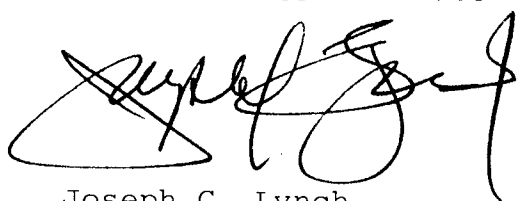
ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
Acting Recorder

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

*Robert D. Zsalmán*  
FR W. DEAN PFEIFFER

Reviewed and approved: AUG 16 2007



Joseph G. Lynch  
Assistant General Counsel  
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

5420  
PERS-911  
8 Apr 02

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO  
LT [REDACTED], NC, USNR, [REDACTED]

Ref: (a) DOD Directive 1300.4  
(b) SECNAVINST 1000.7D

Encl: (1) BCNR memo 5420 PERS-00ZCB of 20 Mar 02

1. Enclosure (1) is forwarded with the recommendation that [REDACTED] petition for the integration of her promotion into the Naval Reserve Lieutenant Commander promotion list be granted.
2. [REDACTED] requested inter-service transfer from the Air Force Reserve to the Naval Reserve on 17 August 2000. The Nurse Corps professional review board convened by the Chief, Bureau of Medicine and Surgery recommended approval of then Air Force Captain [REDACTED] inter-service to the Naval Reserve. The Bureau of Naval Personnel concurred, and an Oath of Officer Appointment and Acceptance was issued as a lieutenant with a date of rank of 15 August 1994 to [REDACTED] which she accepted on 7 August 2001.
3. From the documentation provided in enclosure (1), it is apparent the member was given inappropriate counsel as to the timing of her appointment into the Naval Reserve. By waiting until 1 October 2001, her Air Force promotion to O4 would have become effective, thus allowing her to be appointed anytime after that date as a Lieutenant Commander in the Naval Reserve. This is an obvious oversight, which is in need of remedy.
4. To correct this inequity, we recommend that The Board for Correction of Naval Records direct that the records reflect [REDACTED] accepted a Naval Reserve appointment as a Lieutenant Commander on 2 October 2001. The appointment documents should reflect a date of rank of 1 October 2001. This action will allow

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO  
L [REDACTED] NC, USNR, [REDACTED]

retroactive appointment as a Lieutenant Commander and appropriate reimbursement for paid drills performed thus far. We will also insure the member's name is removed from promotional consideration from the upcoming FY 03 Selection Board scheduled for June of this year.

5. Point of contact in this matter [REDACTED] 01B, at [REDACTED] commercial [REDACTED]

[REDACTED]

Director, Naval Reserve Personnel  
Administration Division



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

08353-01

5420  
PERS-80

12 APR 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF  
LIEUTENANT [REDACTED] NC, USNR, [REDACTED]

Encl: (1) BCNR File 08353-01

1. We are returning enclosure (1) recommending approval of Lieutenant [REDACTED] request to honor her inter-service transfer appointment to Lieutenant Commander.

2. Lieutenant [REDACTED] acceptance of a 2 October 2001 appointment per PERS-911 recommendation would place Lieutenant [REDACTED] as a Lieutenant Commander coming in to the Naval Reserve. The inter-service transfer agreement would mean Lieutenant [REDACTED] could be brought in as a Lieutenant Commander and would not have to participate in another Lieutenant Commander Promotion Selection Board.

[REDACTED]  
Deputy Director, Active and  
Reserve Officer Career  
Progression Division

9 May 2002

MEMO FOR RECORD

Re: Case # [REDACTED] C, USNR [REDACTED]

[REDACTED] advises that when [REDACTED] entered the Naval Reserve on 7 August 2001, the Secretary of the Navy had been delegated the President's authority under title 10, United States Code, section 12203 to issue a direct commission as a LCDR in the Naval Reserve.

[REDACTED]  
[REDACTED] JIN  
Head, Performance Section