

/FYI

Team briefing notes: [JAN15]

- Special interest cases (e.g., FOIA, Privacy Act, Whistleblower, reconsiderations of previous examiners, AOs, court remands, congressional/senatorial requests, active duty personnel applications, Don't Ask - Don't Tell repeal, PTSD, TBI, transgender, etc.) are now being assigned by 5 U.S.C. 552(b)(6) and distributed to "ALL" examiners;
- Plz discuss (plan of action) all specialty cases (Whistleblower, transgender, court remands, etc.) with me and 5 U.S.C. 552(b)(6) before taking action (requesting AO, sending out for an advanced review, boarding, etc.) {some of these cases may need to be discussed with 5 U.S.C. 552(b)(6) as well};
- Hit List cases are now being monitored by 5 U.S.C. 552(b)(6) is assigning these cases (oldest first) to "ALL" examiners; (the more backlogged cases - the more assigned to each examiner)
- Plz keep track of all "duties performed" that are outside of your PD (used to help performance ratings) - this is for your benefit;
- OJT is requested by all to new and old examiners. If for some reason you don't have the time for provide OJT, plz find someone else to provide it (team work is a must and we are a very small team right now);
- If you feel a need for or want training, plz contact 5 U.S.C. 552(b)(6)
- Vacancies are being filled ASAP;
- 5 U.S.C. 552(b)(6) is working on the reorg of BCNR and will make a presentation upon his completion;
- CWS is being looked at for all employees; right now only supervisors are restricted;
- In my absence, plz notify (call or email) 5 U.S.C. 552(b)(6) if you are not going to report to work/be on leave; [this includes government (OPM directed) unscheduled leave]

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Reminders:

5 U.S.C. 552(b)(6) doors are open (Open Door Policy) to all; plz run all work related (DRS) matters/concerns via me before talking w/ 5 U.S.C. 552(b)(6) - eliminates surprises;

Immediately accept responsibility for all cases in your possession;

Code (add issues) special interest cases in the system
[DADT/Code 1174, PTSD/Code 1163, TRANSGENDER/SEX CHANGE/Code 12]

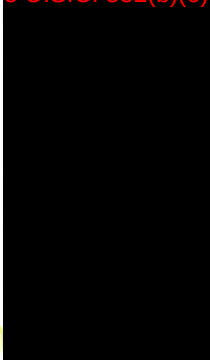
Be especially mindful of the number of days a case has been at BCNR. ITR no cases should fall into the 15 to 18 month category; however, if this occurs, plz try (really try) to get the case to the board/closed out

{JAN15}

The attached correspondence is forwarded for your information/reference/file. This is the results from the latest "Whistleblower" case in which the Board recommended denial and SECNAV approved the Board's decision.

Please note the language used in both the memo to SECNAV and the response to the Petitioner, for future reference.

cc: 5 U.S.C. 552(b)(6)





DEPARTMENT OF THE NAVY

OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

January 7, 2015

5 U.S.C. 552(b)(6)

Dear 5 U.S.C. 552(b)(6)

This correspondence is in reference to your application to the Board for Correction of Naval Records (BCNR).

I have reviewed and approved the recommendation of the BCNR to deny relief in your case. Within 90 days, you may request the Secretary of Defense to reconsider this decision, pursuant to Department of Defense Directive 7050.6 of July 23, 2007: Military Whistleblower Protection. This request should be mailed to the following address:

Deputy Under Secretary of Defense for Program Integration
Attn: Director, Legal Policy
4000 Defense Pentagon
Washington, D.C. 20301-4000

Your request for reconsideration by the Secretary of Defense must be in writing and include your name, rank, duty title, organization, duty location, address and commercial or DSN telephone number; a copy of your application to the BCNR and the final decision; and a statement of the specific reasons you are not satisfied with the decision and the specific remedy or relief you request. Your request for reconsideration by the Secretary of Defense must be based on the BCNR record; a request based on factual allegations or evidence not previously presented to the BCNR will not be considered by the Secretary of Defense, but may be the basis for reconsideration by the BCNR under Secretary of the Navy Instruction 5420.193, enclosure (1), Section (9).

Sincerely,

Robert L. Woods
Assistant General Counsel
(Manpower and Reserve Affairs)



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

5 U.S.C. 552(b)(6)

Docket No: 104-14
20 November 2014

MEMORANDUM FOR ASST GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS)

Subj: 5 U.S.C. 552(b)(6) USMCR (RET), XXX-XX-5 U.S.C. 552(b)(6)
REVIEW OF NAVAL RECORD (WHISTEBLOWER)

Encl: (1) BCNR Rept of Proceedings in SNO's case
(2) Memo advising SNO of right to appeal to SECDEF

1. Enclosure (1) is forwarded for Secretarial review as a Military Whistleblower Reprisal case.

2. It is recommended that you approve enclosure (1), in which the Board recommends denying relief, and that the appropriate official sign enclosure (2).

A handwritten signature in black ink, appearing to read "Robert J. O'Neill", is positioned above the printed name.

ROBERT J. O'NEILL
Executive Director



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

5 U.S.C. 552(b)(6)

Docket No: 104-14
20 November 2014

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

Subj: 5 U.S.C. 552(b)(6) USMCR (RET), XXX-XX-5 U.S.C. 552(b)(6)
REVIEW OF NAVAL RECORD (WHISTLEBLOWER)

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

Encl: (1) DD Form 149 dtd 9 Sep 13 w/attachments
(2) HQMC JAR7 memo dtd 29 May 14
(3) HQMC MMSR-3 memo dtd 21 Jul 14
(4) Subject ltr dtd 23 Aug 14 w/encls

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by reinstating him on active duty with back pay and allowances effective 1 November 2010, and granting a special selection board (SSB) for promotion to colonel (pay grade O-6) in the Marine Corps Reserve (Active Reserve (AR) program).

2. The Board, consisting of Messrs. 5 U.S.C. 552(b)(6) considered Petitioner's allegations of error and injustice on 20 November 2014, and pursuant to its regulations, determined that in light of the available evidence of record, relief should be denied. 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 which were available under existing law and regulations within the Department of the Navy.

b. On 1 November 2006, Petitioner retired from active duty with what he thought was 20 years of service as a lieutenant

colonel. During June 2009, Headquarters Marine Corps (HQMC) discovered that it made an error in computing his service time for retirement, and he did not have 20 years of qualifying service. As a courtesy to him, on 1 August 2009, he was recalled to active duty in the reserve component as a Senior Military Instructor at a high school in Louisiana to complete the service necessary to receive a 20 year retirement. On 11 September 2009, he made a whistleblower complaint regarding the misallocation of funds by a master sergeant (pay grade E-8). He then failed of selection for promotion before the Fiscal Year (FY) 2009 AR Colonel Selection Board. On 11 March 2010, this Board removed his failure of selection before the FY 2009 AR Colonel Selection Board based upon a favorable advisory opinion from HQMC. On 9 April 2010, he requested reconsideration of his original whistleblower complaint against the master sergeant. On 1 November 2010, he voluntarily retired in lieu of Permanent Change of Station (PCS) orders.

c. On 11 August 2011 and 22 August 2013, the Department of Defense Inspector General (DODIG) investigations did not substantiate Petitioner's complaint that the PCS orders were in reprisal for reporting the misallocation of funds by the master sergeant (Tab A, pages A2 and A16 of enclosure (1)).

d. Enclosure (2) is an advisory opinion from the HQMC Research and Civil law Branch (JAR7), which states to the effect that Petitioner's case has no merit and recommends no relief be granted. The advisory opinion notes that there was no evidence that the master sergeant who was the subject of Petitioner's whistleblower complaint had any input in issuing the PCS orders.

e. Enclosure (3) is an advisory opinion from the HQMC Separation and Retirement Branch (MMSR-3), which states to the effect that Petitioner's request has no merit and recommends no relief be granted. This advisory opinion notes that he voluntarily retired in lieu of accepting PCS orders.

f. Enclosure (4) is Petitioner's rebuttal letter to the unfavorable advisory opinions from HQMC. He still contends that he was the victim of reprisal for filing a whistleblower complaint against the master sergeant, and would not have retired but for the PCS orders.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the unfavorable advisory opinions from HQMC, the Board finds no evidence of an error or an injustice warranting relief. The Board substantially concurs with the

advisory opinions and agrees with the findings of the DODIG regarding his whistleblower complaint and request for reconsideration. In this connection, the Board is unable to find that the issuance of PCS orders was in reprisal for Petitioner's protected communication with the DODIG. The Board finds no grounds to set aside his voluntary retirement of 1 November 2010 or grant an SSB. In view of the above, the recommendation of the Board is as follows:

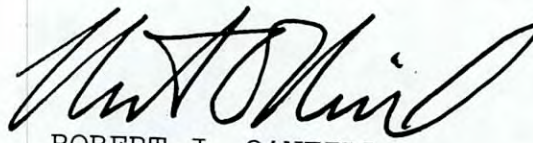
RECOMMENDATION:

- a. That Petitioner's request be denied.
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.

5 U.S.C. 552(b)(6)

Recorder

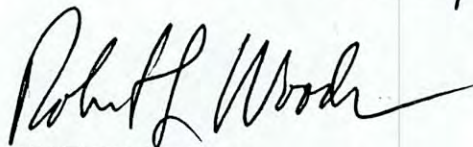
5. The foregoing report of the Board is submitted for your review and action.



ROBERT J. O'NEILL
Executive Director

Reviewed and approved: _____

1/7/15



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