



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SECNAVINST 1401.1B
Pers-26
Pers-93
25 April 1997

SECNAV INSTRUCTION 1401.1B

From: Secretary of the Navy
To: All Ships and Stations

Subj: SPECIAL PROMOTION SELECTION BOARDS FOR COMMISSIONED AND
WARRANT OFFICERS IN THE NAVY AND MARINE CORPS

Ref: (a) SECNAVINST 1421.7B (NOTAL)
(b) Title 10, United States Code
(c) SECNAVINST 1420.1A
(d) DoD Directive 1320.11 of 6 May 96, Special Selection
Boards (NOTAL)
(e) SECNAVINST 1401.3
(f) SECNAVINST 1920.6A

1. Purpose. To set forth revised requirements to convene special selection boards to consider officers and warrant officers eligible for promotion in or above the promotion zone who were either not considered by a selection board, or who were considered, but due to defects in the board's proceedings as to them, did not receive lawful or proper consideration. This instruction is a complete revision and should be reviewed in its entirety. Symbols to denote deleted, revised or added paragraphs are not reflected.

2. Cancellation. SECNAVINST 1401.1A.

3. Applicability

a. The provisions of this instruction are applicable to officers on the active duty lists, the reserve active status lists, and the warrant officer active duty lists in the Navy and Marine Corps. Special promotion selection boards for officers on the active duty lists are authorized only in cases where the promotion selection board in question convened on or after 15 September 1981, and for officers on the reserve active status lists only in cases where the promotion selection board in question is convened on or after 1 October 1995.

b. Special selection boards for officers on the reserve warrant officer active status lists are covered in reference (a).



SECNAVINST 1401.1B

25 APR 1997

4. Definitions. The following definitions apply throughout this instruction.

a. Promotion Selection Board. A board convened under 10 U.S.C. §611 or §14101 and the annual promotion plans to consider for promotion to the next higher grade officers in the Navy or Marine Corps (except Naval Reserve Warrant officers).

b. Special Selection Board. A selection board convened under 10 U.S.C. §628 or §14502 to consider for promotion officers who either were not considered by a promotion selection board as a result of error, or who were considered, but due to defects in the board's proceedings as to them did not receive lawful or proper consideration.

5. Background

a. References (b) and (c) prescribe rules and procedures for convening promotion selection boards to consider eligible officers on the active duty lists, the reserve active status lists and on the warrant officer active duty lists of the Navy and Marine Corps for promotion to the next higher grade. When, because of administrative error, the record of an officer in or above the promotion zone is not considered by a promotion selection board, the Secretary of the Navy (SECNAV) is required to convene a special selection board under §628 and §14502 of reference (b), as implemented by reference (d), to consider that officer for promotion.

b. SECNAV is authorized by §628 and §14502 of reference (b), and encouraged by paragraph D2 of reference (d), to convene a special selection board to consider cases of officers who were in or above the promotion zone before a promotion selection board, but not selected, if SECNAV determines that the action of that board was contrary to law, or involved material error of fact or material administrative error, or that the board lacked some material information for consideration.

c. Requests for special selection boards may be initiated by an individual officer. Requests will be considered and approved per paragraph 17.

6. Policy

a. Special selection boards will be used only to consider the records of officers, and make recommendations to SECNAV with regard to selection for promotion, in cases where an error or omission precluded an officer's consideration, or proper

25 APR 1997

consideration, by a promotion selection board. Correction of an error in an officer's record, after the officer incurs a failure of selection by the promotion selection board that was affected by the error, will not necessarily be the basis for convening a special selection board.

b. A special selection board will not be convened to consider any officer who, through the exercise of reasonable diligence, might have discovered and corrected the error or omission in the official record prior to convening the promotion selection board that considered, but did not select the officer.

7. Officers Not Considered Due to Administrative Error

a. SECNAV shall, upon determination that an administrative error prevented consideration of an officer's record before a promotion selection board, convene a special selection board to consider the record of the officer concerned. The Chief of Naval Operations (CNO) or the Commandant of the Marine Corps (CMC), as appropriate, or their respective designee, shall provide narrative comments and recommendations, as appropriate, for consideration by SECNAV in making determinations under the provision of this paragraph.

b. Failure to submit the record of an officer to the promotion selection board for that officer's grade and competitive category prior to the date that the board adjourned and forwarded its report to SECNAV shall constitute administrative error if:

(1) The officer was on, or subject to placement on, the active duty list, the reserve active status list or the warrant officer active duty list, of the Navy or Marine Corps on or before the date the board convened, and

(2) The officer should have been considered by the board as an in-zone or above-zone eligible officer.

8. Officers Considered by a Promotion Selection Board, but not Recommended for Promotion

a. A special selection board may be convened when SECNAV determines that an officer on the active duty list, the reserve active status list, or the warrant officer active duty list, was not recommended for promotion by a promotion selection board as an in-zone or above-zone eligible because:

SECNAVINST 1401.1B

25 APR 1997

(1) The promotion selection board, which considered the officer for promotion, acted contrary to law;

(2) The action of the promotion selection board involved material error of fact or material administrative error; or

(3) The promotion selection board did not have material information before it for its consideration.

b. A determination that a promotion selection board acted contrary to law, that material error of fact or material administrative error occurred, or that material information was not considered by a promotion selection board, shall be made by SECNAV. SECNAV will consider the comments and recommendations of the CNO or CMC, as appropriate, or their respective designee. All requests for SECNAV determination shall be reviewed by the Judge Advocate General (JAG). JAG shall provide advice to SECNAV concerning any question of law, or mixed question of law and fact, that JAG determines has been raised by a request or by the comments and recommendations made on the request.

c. The following principles apply regarding SECNAV determinations under subparagraph 8a:

(1) Any act of a promotion selection board that violates §575, §616, or §14108 of reference (b) is contrary to law.

(2) Any act of a promotion selection board that deprives the officer concerned of a constitutional or statutory right is contrary to law.

(3) Any error of fact or administrative/procedural error that is more likely than not to have deprived the officer concerned of a fair and impartial consideration by the board is a material error.

(4) Any information that, when properly recorded in, or removed from, an officer's record would have been essential to a substantially accurate, complete, and fair portrayal of the officer's career is material information.

d. Officers have a duty to review their records periodically to ensure their records are complete and accurate. Records that provide a substantially accurate, complete, and fair portrayal of the officer's career are especially important when that officer is being considered for selection for promotion. An officer's request for consideration by a special selection board must

25 APR 1997

detail the steps the officer took to ensure the completeness and accuracy of the official record prior to the convening of the board which considered, but failed to select, the officer.

e. If an officer has failed of selection for promotion to the next higher grade before a promotion selection board more than once, and if more than one of these failures involved the same error as determined under subparagraph 8a, the officer's case normally shall be considered by only one special selection board. This special selection board will be approved for the first promotion selection board that was affected by the same error, unless the officer specifies the particular board for which relief is sought, or other circumstances exist indicating that relief for a subsequent board is more appropriate.

9. Sampling of Records. The CNO and the CMC shall take appropriate action within their respective services to ensure the preparation by promotion selection boards of a sampling of records of officers of each competitive category who were recommended for promotion, and records of officers of each competitive category who were not recommended for promotion by the promotion selection board. They or their respective designees will also prescribe the method by which the sampling of records will be selected for their respective services. The sampling of records shall enable a special selection board to evaluate an officer's record according to the procedures at paragraph 12b. Sample records shall be retained for a period of at least seven calendar years. Written communications to the board by officers whose records are retained will also be retained with the records. Each board president shall deliver the sampling of records to Chief of Naval Personnel (CNP), or Director, Personnel Management Division (MM), Headquarters, Marine Corps, as appropriate. CNP and Director, Personnel Management Division, respectively, are designated as the custodians of all sample records retained under this instruction.

10. Presentation of Records to Special Selection Boards. The record of an officer presented to a special selection board will be modified as necessary to reflect the record of the officer as it would have appeared to the board that should have considered the officer or, if corrected, would have appeared to the board that considered the officer. Special selection boards will compare the modified record to the sample records, retained under §628 and §14502 of reference (b), from the corresponding promotion selection board.

25 APR 1997

11. Special Selection Board Membership. Special selection board membership shall be in accordance with §573, §612, or §14102 of reference (b) and reference (e).

12. Special Selection Board Procedures and Reports

a. Special selection boards shall be convened by precept, addressed to the president of the board, and signed by SECNAV. The precept will appoint the president and members of the board and will include instructions governing the proceedings of the board. Guidance issued to a special selection board will be consistent with that provided to the promotion selection board that failed to consider, or failed to properly consider, the officer whose record is before the board for consideration. All guidance shall be approved by SECNAV.

b. The sample of records provides a relative base from which special selection boards determine which eligible officers, in the opinion of a majority of the members of the board, are fully qualified for promotion and when compared to the officers whose sample records were considered:

(1) Are better qualified for promotion than any of the officers who failed of selection for promotion before the promotion selection board; and

(2) Are comparable to those officers who were selected for promotion before the promotion selection board.

c. Special selection boards shall submit a written board report to SECNAV signed by each member and the recorder of the board, certifying that the board has carefully considered the record of each officer whose name was furnished to it. The report will contain a list of those officers considered and recommended for promotion and those officers considered and not recommended for promotion. The report shall be forwarded for approval by an appropriate official via first, CNP (Navy boards); second, CNO or CMC, as appropriate; third, JAG for legal review; and fourth, SECNAV. Additionally, the board shall notify SECNAV, by separate memorandum, of the name of each officer whose record, in the opinion of a majority of the members of the board, should be required to show cause for retention on active duty or in an active status under §1181 and §14902 of reference (b) and reference (f) because of substandard performance of duty, misconduct, moral or professional dereliction, or because the officer's retention is not clearly consistent with the interests of national security.

25 APR 1997

d. Except as authorized or required by SECNAV, Secretary of Defense (SECDEF), or the President, the proceedings and report of a special selection board, including specific information regarding the sample records used and how each officer's record was rated, shall not be disclosed to any person not a member or recorder of the board.

13. Effect of Nonselection

a. If a special selection board convened under paragraph 7 does not recommend for promotion an officer whose name was furnished to it for consideration as in-zone or above-zone, the officer shall be considered to have failed of selection for promotion.

b. If a special selection board convened under paragraph 8 does not recommend for promotion an officer whose name was furnished to it for consideration, the officer shall not incur any additional failure of selection.

14. Promotion of Officer Selected by Special Selection Boards. If the report of a special selection board convened under this instruction, as approved by the President, Secretary of Defense, or SECNAV, as appropriate, recommends for promotion to the next higher grade an officer whose name was furnished to it for consideration, such officer shall, as soon as practicable, be appointed to the next higher grade, unless the officer's appointment is delayed under reference (b). An officer promoted as a result of the recommendation of a special selection board shall, upon promotion, have the same date of rank, the same effective date for the pay and allowances of that officer's grade, and the same position on the active duty list, the reserve active status list, or the warrant officer active duty list, as that officer would have had if that officer had been recommended for promotion by the promotion selection board for which the special selection board was held that should have considered, or that considered but failed to select, that officer.

15. Scheduling of Special Selection Boards and Notification of Officers to be Considered

a. As per paragraph D4 of reference (d), a special selection board, barring extenuating circumstances, such as a heavy caseload, shall be convened and the results made known to affected officers within 180 days after SECNAV determines that a special selection board is warranted. The results of special selection boards shall be made known to affected officers in a timely manner.

25 APR 1997

b. Officers to be considered for promotion by a special selection board shall be notified at least 30 days before the board convenes that they will be considered. Such officers shall be provided an opportunity to send written communications to the board in the same manner as that provided for promotion selection boards.

c. If, within 30 days of convening a special selection board, an additional eligible officer is identified, consideration of that officer may be deferred to a subsequent special selection board. Alternatively, the officer may waive the 30-day notice requirement, so long as the eligible officer has an adequate opportunity to communicate with the board. The officer must either exercise the right to communicate in writing with the president of the board or send a written statement (which may be by message) to CNP (Pers-26 or 93), or to Headquarters, Marine Corps (Code MMPR-1), as appropriate, acknowledging the waiver.

d. Communications with special selection boards shall contain only materials referring to events prior to the convening date of the promotion selection board which failed to consider, or to properly consider, the officer. All third party correspondence concerning the officer must be forwarded to the president of the board by that officer. Communications must be received not later than the convening date of the special selection board.

16. Retention of Statistical Data. CNO or CMC, as appropriate, shall calculate and retain the following statistics for each special selection board for seven years:

a. Statistical data regarding the number of officers considered for promotion to each grade;

b. The number of officers selected for promotion to each grade and the number of officers considered, but not selected, for promotion to each grade;

c. The number of officers considered by the special selection board who were not considered by the appropriate promotion selection board due to administrative error; and

d. The number of officers considered by the special selection board on the basis of legal or other material error regarding previous consideration by the appropriate promotion selection board.

25 APR 1997

17. Action

a. The CNO or CMC, as appropriate, or their respective designees, shall, unless approved under paragraph 18d, request a Secretarial determination under paragraphs 7 or 8 in any case in which it is alleged or discovered that the circumstances discussed in those paragraphs might warrant referral of the officer's case to a special selection board. In the case of an officer who was previously considered by a promotion selection board, but not selected, CNO or CMC shall forward comments and recommendations for consideration by SECNAV via JAG. JAG shall thoroughly review each case and provide advice to SECNAV concerning any question of law, or mixed question of law and fact, which JAG determines has been raised by the request or by the comments and recommendations provided.

b. The Board for Correction of Naval Records (BCNR) may, in appropriate cases, conclude that an individual's case warrants referral to a special selection board. In order to ensure consistency and uniformity in the referral of cases to special selection boards, the BCNR shall refer all such cases to CNO or CMC, as appropriate. CNO or CMC shall forward comments and recommendations concerning the particular case to the Director, BCNR. If the BCNR concludes from the comments and recommendations that the case warrants a special selection board, the BCNR shall refer the case, including CNO or CMC comments and recommendations, to SECNAV.

c. An officer who believes that he or she has been improperly excluded from consideration before a promotion selection board, or who believes that lawful or material error, as described in this instruction, occurred before a promotion selection board in his or her case, will bring supporting information to the attention of the CNO or CMC, as appropriate.

CNO or CMC, as appropriate, may approve special selection board requests in cases where they can clearly determine an officer was denied consideration by a regular promotion selection board because of an administrative error. Should reasonable doubt exist, or a recommendation of disapproval be warranted, the cause will be forwarded to SECNAV for a final determination.

SECNAVINST 1401.1B

25 APR 1997
18. Report. The report required in paragraph 12(c) is exempt from reports control by SECNAVINST 5214.2B.


Richard Danzig
Acting

Distribution:

SNDL Parts 1 and 2
MARCORPS PCN 7100000000 and 71000000100
BUPERS (Pers-26 and Pers-93, 50 copies each)

SECNAV/OPNAV Directives Control Office
Washington Navy Yard Building
901 M Street SE
Washington DC 20374-5074 (20 copies)

Order from:
Navy Inventory Control Point
Cog "I" Material
700 Robbins Avenue
Philadelphia PA 19111-5098

Stocked: 300 copies