United States Court of Appeals for the Federal Circuit

LEE HOLLAND, JR.,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-1027

Appeal from the United States Court of Federal Claims in No. 1:20-cv-00119-MBH, Senior Judge Marian Blank Horn.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

September 1, 2021

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

A.

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

LEE HOLLAND, JR.,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-1027

Appeal from the United States Court of Federal Claims in No. 1:20-cv-00119-MBH, Senior Judge Marian Blank Horn.

ON PETITION FOR PANEL REHEARING

Before DYK, LINN, and CHEN, *Circuit Judges*.

PER CURIAM.

ORDER

Lee Holland, Jr. filed a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

FOR THE COURT

October 14, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

(90 days) JAN 12, 2022

A. (2.)

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

LEE HOLLAND, JR.,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-1027

Appeal from the United States Court of Federal Claims in No. 1:20-cv-00119-MBH, Senior Judge Marian Blank Horn.

ORDER

The appellant having filed the required brief, it is

ORDERED that the order of dismissal and the mandate be, and the same hereby are, VACATED and RECALLED, and the notice of appeal is, REINSTATED.

B.

The Appellee should compute the due date for filing its brief from the date of filing of this order.

FOR THE COURT

June 7, 2021

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

In the United States Court of Federal Claims

No. 20-119C
Filed: August 7, 2020

LEE HOLLAND JR.,		
Plaintiff,	*	**Pro Se Plaintiff; Military Pay; Motion to Dismiss; Subject Matter Jurisdiction; Statute of Limitations; Tort; Conspiracy; Americans with Disabilities Act.**
v.	*	
UNITED STATES,		
Defendant.	*	

Lee Holland, Jr., pro se, Livingston, TX.

Joshua A. Mandlebaum, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him were **Steven J. Gillingham,** Assistant Director, Commercial Litigation Branch, **Robert E. Kirschman, Jr.**, Director, Commercial Litigation Branch and **Ethan P. Davis**, Acting Assistant Attorney General, Civil Division.

OPINION

HORN, J.

Pro se plaintiff, Lee Holland, Jr., a former Dental Technician, Chief Petty Officer in the United States Navy, filed the above-captioned complaint in the United States Court of Federal Claims, on April 28, 2020, seeking review of an August 27, 2019 decision by the Board for Correction of Naval Records (BCNR) and to recover monetary relief. Plaintiff also seeks reappointment as an officer in the Navy Medical Service Corps (MSC), effective February 25, 1975, and incremental promotions to O-5 (Commander) or O-6 (Captain) as of July 1990. Plaintiff "further requests $2,900,000, for reasonable rank advancement wages; $1,300,000, for a loss of social 'prestige' opportunities and experience; and, $129,239.80, for administrative efforts, attorney fees and court costs." Alternatively, plaintiff requests whatever amount the court finds to be just and reasonable. Defendant has moved to dismiss plaintiff's complaint pursuant to Rule 12(b)(1) (2019) of the Rules of the United States Court of Federal Claims (RCFC) for lack of subject matter jurisdiction.

FINDINGS OF FACT

Plaintiff served in the Navy from his enlistment on May 11, 1961 until his retirement on July 1, 1990. Plaintiff was the subject of a medical board in 1966 for "Reiter's syndrome (conjunctivitis, urethritis and arthritis)," after which he was placed on limited duty for five months, before returning to full duty. Plaintiff completed an Associate of Science Degree under the Navy's Associate Degree Program in 1971 and was then assigned to the medical/dental clinic in Long Beach, California. According to the appendix attached to the defendant's motion to dismiss, in January 1974, plaintiff applied for an appointment as an officer in the Medical Services Corps (MSC). In the spring of 1974, plaintiff began to experience pain in his joints and swelling in both of his knees and right wrist and was hospitalized at the Naval Regional Medical Center in Long Beach, California on May 14, 1974. On May 29, 1974, plaintiff received written notice that he had been selected for appointment in the Medical Corps as an Ensign and that his date of rank would be August 1, 1974. While plaintiff was hospitalized, however, he received a diagnosis of rheumatoid arthritis and a medical examiner determined that he was unfit for full duty, and due to the determination that he was unfit for full duty, plaintiff's appointment documents were not issued.

Plaintiff was referred by a Medical Examination Board (MEB) to a Physical Evaluation Board (PEB) on October 23, 1974. Due to the findings of the PEB, plaintiff was transferred to the Temporary Disability Retirement List (TDRL) on February 26, 1975 at his previous pay grade of E-6 (as opposed to the "promotional-grade of Ensign 0-1)." Plaintiff was removed from the TDRL on October 1, 1980 and reenlisted on October 2, 1980. During plaintiff's time on the TDRL he attended law school. After reenlisting, plaintiff unsuccessfully applied for a commission in the Judge Advocate General's Corps (JAG Corps).[1] Following plaintiff's reenlistment, he served on active duty until he was transferred to the Fleet Reserve on February 28, 1989 and then to the retired list on July 1, 1990.

According to the appendix filed with defendant's motion to dismiss, plaintiff has petitioned the United States Navy Board for the Correction of Naval Records (BCNR) three times, receiving partial or full denials on September 8, 1975, July 22, 1983, and August 27, 2019. Plaintiff first petitioned the BCNR in 1975 and sought to have a negative performance evaluation removed from his military record, which was denied on September 8, 1975. In plaintiff's second petition to the BCNR, the subject of an opinion issued on July 13, 1983, he successfully requested the removal of the same negative performance evaluation that was the focus of his 1975 petition, along with related administrative entries (two Enlisted Performance Record entries, an Administrative Remarks entry, a letter from his commanding officer, and a letter from the Navy Recruiting

[1] Information about the rank that plaintiff held when he re-enlisted is not available in the record before this court. There is also a slight inconsistency between the two BCNR documents on the record, with the July 13, 1983, opinion stating that plaintiff unsuccessfully applied for a JAG Corps commission upon his return to active duty and the August 27, 2019, letter noting that plaintiff returned to active duty after not being selected for the JAG Corps.

Command). Plaintiff, however, was unsuccessful with his request for "reinstating his appointment" to the MSC effective August 1, 1974 with a transfer effected to the JAG Corps as of May 1, 1980. In the 1983 petition, plaintiff asserted "that he should not have been denied his appointment to the MSC" and that "the contested material reflecting adversely on his performance nor his physical disability constituted a valid basis for the withholding of the appointment" to the Medical Corps. (capitalization in original). On July 22, 1983, the BCNR removed the negative performance evaluation report and related material from plaintiff's naval record, finding that plaintiff had not received an opportunity to comment on those items and that the special evaluation report was "defective on its face." The remainder of plaintiff's request, to have his record be corrected by reinstating his appointment as an ensign in the MSC and then to be transferred to the JAG Corps effective May 1, 1980, however, was denied. The BCNR found that plaintiff's "physical disability constituted a valid basis for denying his appointment to the MSC." Furthermore, with regard to plaintiff's assertion under the Bureau of Naval Personnel Manual that a member of TDRL is entitled to the temporary grade to which he or she would have been promoted if not for the physical disability found as a result of a physical examination for promotion, the BCNR found that the Bureau of Naval Personnel Manual was not applicable, as "an original appointment as an officer does not equate to a promotion." Additionally, the BCNR was unable to determine if plaintiff would have been appointed to the JAG Corps "but for the unfavorable material whose removal the Board recommends" and further noted that "the Board considers it generally inappropriate as a matter of policy to usurp the discretion of the service in determining who should be offered commissioned status."

In 2018, approximately twenty-eight years after plaintiff's retirement from the Navy, and forty-three years after he first sought relief from the BCNR, Mr. Holland began the process of seeking relief from the BCNR for a third time. Although the application was "not filed in a timely manner," the BCNR waived the statute of limitations and considered the case on its merits "in the interest of justice." Plaintiff requested that his appointment be restored to February 25, 1975 and to receive incremental grade advancements to the rank of O-5 (Commander) or O-6 (Captain) as of July 1990. After a three member panel considered plaintiff's application on April 30, 2019, the BCNR issued a letter on August 27, 2019, denying plaintiff's request, finding that he did not meet the qualifications to receive his appointment "due to not being physically qualified." The BCNR also found that he was never eligible for any officer advancements due to his never having been commissioned. In the absence of new matters for reconsideration that could be presented to or considered by the BCNR, plaintiff was advised that his only recourse would be to seek relief from a court of appropriate jurisdiction.

On October 3, 2019, plaintiff filed for review of the BCNR's August 27, 2019 decision to the United States Court of Appeals for the Federal Circuit. On January 29, 2020, the Federal Circuit transferred the case to this court. The Federal Circuit explained:

> We are a court of limited subject matter jurisdiction and do not have the authority to review appeals directly from the BCNR. *See* 28 U.S.C. § 1295. However, appeals from the BCNR may be taken to the United States Court of Federal Claims, which may order correction of military records "as an

> incident of and collateral to" an award of monetary damages from the United States, such as actions for back pay pursuant to the Tucker Act and the Military Pay Act. *See* 28 U.S.C. § 1491(a)(1), (2); 37 U.S.C. § 204. We have authority to transfer a case to the Claims Court pursuant to 28 U.S.C. § 1631. Although the United States contends in its response that it would not be appropriate to do so here because Mr. Holland's claim is time-barred under 28 U.S.C. § 2501, we deem it more appropriate to transfer for the Claims Court to address that argument.

Holland v. United States, No. 2020-1028 (Fed. Cir. Jan. 29, 2020) (emphasis in original).

Section 1631 of Title 28 of the United States Code provides that if the court in which a civil action is filed finds a lack of jurisdiction, "the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court . . . . in which the action or appeal could have been brought at the time it was filed." 28 U.S.C. § 1631 (2018). Even if the parties do not request a transfer, the court is still permitted to order a transfer without being asked to do so. See Brown v. United States, 74 Fed. Cl. 546, 550 (2006) (citing Tex. Peanut Farmers v. United States, 409 F.3d 1370, 1375 (Fed. Cir. 2005)).

In this court, defendant moved to dismiss plaintiff's complaint pursuant to RCFC 12(b)(1) for lack of subject matter jurisdiction because plaintiff's claims fall outside the six-year statute of limitations set forth in 28 U.S.C. § 2501 (2018), and, therefore, are time-barred. Defendant argues that the latest possible date when plaintiff's claims could have begun to accrue is the date of his retirement on July 1, 1990, and that any claims would have needed to be brought within six years of that date. Furthermore, defendant also argues that plaintiff's recent appeal to the BCNR is not relevant in regard to determining when the claim accrued.

In response, plaintiff argues that there is no "elapse of time statute" in a "conspiracy," and points to his correspondence with the late Senator Alan Cranston regarding "financial irregularities and malfeasance" in his command. In plaintiff's opposition to defendant's motion to dismiss, filed on June 10, 2020, he argues that the Americans with Disabilities Act (ADA) supports the return of his promotion and also alleges that the original decision to not grant his commission was a due process violation. Furthermore, plaintiff encourages this court to look into his performance evaluations over the last ten years of his service, which the BCNR did not have in its "possession," for proof that he was carrying out legal duties and of his high moral character that is contrary to the claims of the "conspirators" that he alleges took away his commission. In response to these claims, defendant notes that the ADA and Due Process Clauses of the United States Constitution do not support jurisdiction before this court, as they are not money-mandating, and therefore, do not constitute a cause of action under the Tucker Act, 28 U.S.C. § 1491. Additionally, defendant points out that any claims involving a conspiracy are allegations of a crime or a tort, both of which are outside this court's jurisdiction. Furthermore, defendant also argues that plaintiff demonstrated that he knew of the facts underlying his claim several decades ago, as is demonstrated by his earlier petition to the BCNR in 1983, and reiterates its argument that plaintiff's claim is time-barred.

DISCUSSION

As noted above, in this case, defendant has moved to dismiss plaintiff's complaint pursuant to RCFC 12(b)(1). First, the court recognizes that plaintiff is proceeding pro se. When determining whether a complaint filed by a pro se plaintiff is sufficient to invoke review by a court, a pro se plaintiff is entitled to a more liberal construction of the pro se plaintiff's pleadings. See Haines v. Kerner, 404 U.S. 519, 520-21 (requiring that allegations contained in a pro se complaint be held to "less stringent standards than formal pleadings drafted by lawyers"), reh'g denied, 405 U.S. 948 (1972); see also Erickson v. Pardus, 551 U.S. 89, 94 (2007); Hughes v. Rowe, 449 U.S. 5, 9-10 (1980); Estelle v. Gamble, 429 U.S. 97, 106 (1976), reh'g denied, 429 U.S. 1066 (1977); Matthews v. United States, 750 F.3d 1320, 1322 (Fed. Cir. 2014); Jackson v. United States, 143 Fed. Cl. 242, 245 (2019), appeal docketed; Diamond v. United States, 115 Fed. Cl. 516, 524 (2014), aff'd, 603 F. App'x 947 (Fed. Cir.), cert. denied, 135 S. Ct. 1909 (2015). However, "there is no 'duty [on the part] of the trial court . . . to create a claim which [plaintiff] has not spelled out in his [or her] pleading . . . .'" Lengen v. United States, 100 Fed. Cl. 317, 328 (2011) (alterations in original) (quoting Scogin v. United States, 33 Fed. Cl. 285, 293 (1995) (quoting Clark v. Nat'l Travelers Life Ins. Co., 518 F.2d 1167, 1169 (6th Cir. 1975))); see also Bussie v. United States, 96 Fed. Cl. 89, 94, aff'd, 443 F. App'x 542 (Fed. Cir. 2011); Minehan v. United States, 75 Fed. Cl. 249, 253 (2007). "While a pro se plaintiff is held to a less stringent standard than that of a plaintiff represented by an attorney, the pro se plaintiff, nevertheless, bears the burden of establishing the Court's jurisdiction by a preponderance of the evidence." Riles v. United States, 93 Fed. Cl. 163, 165 (2010) (citing Hughes v. Rowe, 449 U.S. at 9; and Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir.), reh'g and reh'g en banc denied (Fed. Cir. 2002)); see also Kelley v. Secretary, U.S. Dep't of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987) ("[A] court may not similarly take a liberal view of [] jurisdictional requirement[s] and set a different rule for pro se litigants only."); Schallmo v. United States, 147 Fed. Cl. 361, 363 (2020); Hale v. United States, 143 Fed. Cl. 180, 184 (2019) ("[E]ven pro se plaintiffs must persuade the court that jurisdictional requirements have been met." (citing Bernard v. United States, 59 Fed. Cl. 497, 499, aff'd, 98 F. App'x 860 (Fed. Cir. 2004))); Golden v. United States, 129 Fed. Cl. 630, 637 (2016); Shelkofsky v. United States, 119 Fed. Cl. 133, 139 (2014) ("[W]hile the court may excuse ambiguities in a pro se plaintiff's complaint, the court 'does not excuse [a complaint's] failures.'" (quoting Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995))); Harris v. United States, 113 Fed. Cl. 290, 292 (2013) ("Although plaintiff's pleadings are held to a less stringent standard, such leniency 'with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.'" (quoting Minehan v. United States, 75 Fed. Cl. at 253)).

"Subject-matter jurisdiction may be challenged at any time by the parties or by the court sua sponte." Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004) (Fanning, Phillips & Molnar v. West, 160 F.3d 717, 720 (Fed. Cir. 1998)), reh'g and reh'g en banc denied (Fed. Cir. 2004), cert. denied, 545 U.S. 1127 (2005); see also St. Bernard Parish Gov't v. United States, 916 F.3d 987, 992-93 (Fed. Cir. 2019) ("[T]he court must address jurisdictional issues, even sua sponte, whenever those issues come to the court's attention, whether raised by a party or not, and even if the parties affirmatively urge the court to exercise jurisdiction over the case." (citing Foster v. Chatman, 136 S. Ct. 1737,

1745 (2016)); Int'l Elec. Tech. Corp. v. Hughes Aircraft Co., 476 F.3d 1329, 1330 (Fed. Cir. 2007); Fanelli v. United States, 146 Fed. Cl. 462, 466 (2020). The Tucker Act, 28 U.S.C. § 1491 (2018), grants jurisdiction to this court as follows:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1). As interpreted by the United States Supreme Court, the Tucker Act waives sovereign immunity to allow jurisdiction over claims against the United States (1) founded on an express or implied contract with the United States, (2) seeking a refund from a prior payment made to the government, or (3) based on federal constitutional, statutory, or regulatory law mandating compensation by the federal government for damages sustained. See United States v. Navajo Nation, 556 U.S. 287, 289-90 (2009); see also United States v. Mitchell, 463 U.S. 206, 216 (1983); Alvarado Hosp., LLC v. Price, 868 F.3d 983, 991 (Fed. Cir. 2017); Greenlee Cnty., Ariz. v. United States, 487 F.3d 871, 875 (Fed. Cir.), reh'g and reh'g en banc denied (Fed. Cir. 2007), cert. denied, 552 U.S. 1142 (2008); Palmer v. United States, 168 F.3d 1310, 1314 (Fed. Cir. 1999); Kuntz v. United States, 141 Fed. Cl. 713, 717 (2019). "Not every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act. The claim must be one for money damages against the United States . . . ." United States v. Mitchell, 463 U.S. at 216; see also United States v. White Mountain Apache Tribe, 537 U.S. 465, 472 (2003); N.Y. & Presbyterian Hosp. v. United States, 881 F.3d 877, 881 (Fed. Cir. 2018); Smith v. United States, 709 F.3d 1114, 1116 (Fed. Cir.), cert. denied, 571 U.S. 945 (2013); RadioShack Corp. v. United States, 566 F.3d 1358, 1360 (Fed. Cir. 2009); Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008) ("[P]laintiff must . . . identify a substantive source of law that creates the right to recovery of money damages against the United States."); Jackson v. United States, 143 Fed. Cl. at 245. In Ontario Power Generation, Inc. v. United States, the United States Court of Appeals for the Federal Circuit identified three types of monetary claims for which jurisdiction is lodged in the United States Court of Federal Claims. The Ontario Power Generation, Inc. court wrote:

> The underlying monetary claims are of three types. . . . First, claims alleging the existence of a contract between the plaintiff and the government fall within the Tucker Act's waiver . . . . Second, the Tucker Act's waiver encompasses claims where "the plaintiff has paid money over to the Government, directly or in effect, and seeks return of all or part of that sum." Eastport S.S. [Corp. v. United States, 178 Ct. Cl. 599, 605-06,] 372 F.2d [1002,] 1007-08 [(1967)] (describing illegal exaction claims as claims "in which 'the Government has the citizen's money in its pocket'" (quoting Clapp v. United States, 127 Ct. Cl. 505, 117 F. Supp. 576, 580 (1954)) . . . . Third, the Court of Federal Claims has jurisdiction over those claims where "money has not been paid but the plaintiff asserts that he is nevertheless

> entitled to a payment from the treasury." Eastport S.S., 372 F.2d at 1007. Claims in this third category, where no payment has been made to the government, either directly or in effect, require that the "particular provision of law relied upon grants the claimant, expressly or by implication, a right to be paid a certain sum." Id.; see also [United States v.]Testan, 424 U.S. [392,] 401-02 [(1976)] ("Where the United States is the defendant and the plaintiff is not suing for money improperly exacted or retained, the basis of the federal claim-whether it be the Constitution, a statute, or a regulation-does not create a cause of action for money damages unless, as the Court of Claims has stated, that basis 'in itself . . . can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" (quoting Eastport S.S., 372 F.2d at 1009)). This category is commonly referred to as claims brought under a "money-mandating" statute.

Ont. Power Generation, Inc. v. United States, 369 F.3d 1298, 1301 (Fed. Cir. 2004); see also Samish Indian Nation v. United States, 419 F.3d 1355, 1364 (Fed. Cir. 2005); Twp. of Saddle Brook v. United States, 104 Fed. Cl. 101, 106 (2012).

To prove that a statute or regulation is money-mandating, a plaintiff must demonstrate that an independent source of substantive law relied upon "'can fairly be interpreted as mandating compensation by the Federal Government.'" United States v. Navajo Nation, 556 U.S. at 290 (quoting United States v. Testan, 424 U.S. at 400); see also United States v. White Mountain Apache Tribe, 537 U.S. at 472; United States v. Mitchell, 463 U.S. at 217; Blueport Co., LLC v. United States, 533 F.3d 1374, 1383 (Fed. Cir. 2008), cert. denied, 555 U.S. 1153 (2009). The source of law granting monetary relief must be distinct from the Tucker Act itself. See United States v. Navajo Nation, 556 U.S. at 290 (The Tucker Act does not create "substantive rights; [it is simply a] jurisdictional provision[] that operate[s] to waive sovereign immunity for claims premised on other sources of law (*e.g.*, statutes or contracts)."); see also Me. Community Health Options v. United States, 140 S. Ct. 1308, 1327-28 (2020). "'If the statute is not money-mandating, the Court of Federal Claims lacks jurisdiction, and the dismissal should be for lack of subject matter jurisdiction.'" Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1308 (Fed. Cir. 2008) (quoting Greenlee Cnty., Ariz. v. United States, 487 F.3d at 876); see also N.Y. & Presbyterian Hosp. v. United States, 881 F.3d at 881; Fisher v. United States, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (noting that the absence of a money-mandating source is "fatal to the court's jurisdiction under the Tucker Act"); Downey v. United States, 147 Fed. Cl. 171, 175 (2020) ("And so, to pursue a substantive right against the United States under the Tucker Act, a plaintiff must identify and plead a money-mandating constitutional provision, statute, or regulation." (citing Cabral v. United States, 317 F. App'x 979, 981 (Fed. Cir. 2008))); Jackson v. United States, 143 Fed. Cl. at 245 ("If the claim is not based on a 'money-mandating' source of law, then it lies beyond the jurisdiction of this Court." (citing Metz v. United States, 466 F.3d 991, 997 (Fed. Cir. 2006)).

"Determination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." Holley v. United States, 124 F.3d 1462, 1465 (Fed. Cir.) (citing Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 9-10 (1983)), reh'g denied (Fed. Cir. 1997); see also Klamath Tribe Claims Comm. v. United States, 97 Fed. Cl. 203, 208 (2011); Gonzalez-McCaulley Inv. Grp., Inc. v. United States, 93 Fed. Cl. 710, 713 (2010). A plaintiff need only state in the complaint "a short and plain statement of the grounds for the court's jurisdiction," and "a short and plain statement of the claim showing that the pleader is entitled to relief." RCFC 8(a)(1), (2) (2020); Fed. R. Civ. P. 8(a)(1), (2) (2020); see also Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)). To properly state a claim for relief, "[c]onclusory allegations of law and unwarranted inferences of fact do not suffice to support a claim." Bradley v. Chiron Corp., 136 F.3d 1317, 1322 (Fed. Cir. 1998); see also McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1363 n.9 (Fed. Cir. 2007) (Dyk, J., concurring in part, dissenting in part) (quoting C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1286 (3d ed. 2004)); "A plaintiff's factual allegations must 'raise a right to relief above the speculative level' and cross 'the line from conceivable to plausible.'" Three S Consulting v. United States, 104 Fed. Cl. 510, 523 (2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. at 555), aff'd, 562 F. App'x 964 (Fed. Cir.), reh'g denied (Fed. Cir. 2014); see also Hale v. United States, 143 Fed. Cl. at 190. As stated in Ashcroft v. Iqbal, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' 550 U.S. at 555. Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. at 555).

Although the Tucker Act waives federal sovereign immunity in certain cases, and grants this court jurisdiction to hear monetary claims against the government, including military pay claims, this court's jurisdiction is expressly limited by 28 U.S.C. § 2501, which prescribes a six-year statute of limitations for claims arising under the Tucker Act's waiver of sovereign immunity. According to 28 U.S.C. § 2501:

> Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues. . . . A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

Id. "The six-year statute of limitations set forth in section 2501 is a jurisdictional requirement for a suit in the Court of Federal Claims." John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1354 (Fed. Cir.), reh'g en banc denied (Fed. Cir. 2006), aff'd, 552 U.S. 130 (2008); Schnell v. United States, 115 Fed. Cl. 102, 104-5 (2014). The United States Court of Appeals for the Federal Circuit has indicated that a claim accrues ""when all events have occurred to fix the Government's alleged liability, entitling the claimant to demand payment and sue here for his money."" San Carlos Apache Tribe v. United States, 639 F.3d 1346, 1358-59 (Fed. Cir.) (quoting Samish Indian Nation v. United States, 419 F.3d 1355, 1369 (Fed. Cir. 2005) (quoting Martinez v. United States, 333 F.3d 1295, 1303 (Fed. Cir. 2003), cert. denied, 540 U.S. 1177 (2004))), reh'g en banc

denied (Fed. Cir. 2011); see also FloorPro, Inc. v. United States, 680 F.3d 1377, 1381 (Fed. Cir. 2012); Martinez v. United States, 333 F.3d at 1303 ("A cause of action cognizable in a Tucker Act suit accrues as soon as all events have occurred that are necessary to enable the plaintiff to bring suit, *i.e.*, when 'all events have occurred to fix the Government's alleged liability, entitling the claimant to demand payment and sue here for his money.'" (quoting Nager Elec. Co. v. United States, 177 Ct. Cl. 234, 240, 368 F.2d 847, 851 (1966), motion denied, 184 Ct. Cl. 390, 396 F.2d 977 (1968)) (emphasis in original); Mildenberger v. United States, 643 F.3d 938, 944-45 (Fed. Cir. 2011); Hopland Band of Pomo Indians v. United States, 855 F.2d 1573, 1577 (Fed. Cir. 1988); see also Eden Isle Marina, Inc. v. United States, 113 Fed. Cl. 372, 481 (2013); Brizuela v. United States, 103 Fed. Cl. 635, 639, aff'd, 492 F. App'x 97 (Fed. Cir. 2012), cert. denied, 133 S. Ct. 1645 (2013); see also Levy v. United States, 83 Fed. Cl. 67, 73, 79 (2008) (dismissing a claim for military reserve retirement benefits because suits against the United States are subject to a six-year statute of limitations and the claim was filed outside the allotted timeframe); Barney v. United States, 57 Fed. Cl. 76, 83, 86 (2003) (dismissing former Airman's claims for wrongful discharge/unpaid wages and disability retirement because they were time-barred by the six-year statute of limitations). A Judge of the United States Court of Federal Claims has noted that:

> It is well-established that a claim accrues under section 2501 "when 'all events have occurred to fix the Government's alleged liability, entitling the claimant to demand payment and sue here for his money.'" Martinez v. United States, 333 F.3d 1295, 1303 (Fed. Cir. 2003) (en banc), cert. denied, 540 U.S. 1177 (2004) (quoting Nager Elec. Co. v. United States, 368 F.2d 847, 851 (Ct. Cl. 1966)); see also Samish [Indian Nation v. United States], 419 F.3d [1355,] 1369 [(2005)]. Because, as noted, this requirement is jurisdictional, plaintiff bears the burden of demonstrating that its claims were timely. See Alder Terrace, Inc. v. United States, 161 F.3d 1372, 1377 (Fed. Cir. 1998); Entines v. United States, 39 Fed. Cl. 673, 678 (1997), aff'd, 185 F.3d 881 (Fed. Cir.), cert. denied, 526 U.S. 1117 (1999); see also John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1362 (Fed. Cir. 2006) (Newman, J., dissenting); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988).

Parkwood Assocs. Ltd. P'ship v. United States, 97 Fed. Cl. 809, 813-14 (2011), aff'd, 465 F. App'x 952 (Fed. Cir. 2012); see also Mgmt. & Training Corp. v. United States, 137 Fed. Cl. 780, 783 (2018); Klamath Tribe Claims Comm. v. United States, 97 Fed. Cl. 203, 209 (2011) (citing Alder Terrace, Inc. v. United States, 161 F.3d 1372, 1377 (Fed. Cir. 1998)).

Accrual of a claim is "'determined under an objective standard" and plaintiff does not have to possess actual knowledge of all the relevant facts in order for a cause of action to accrue. FloorPro, Inc. v. United States, 680 F.3d at 1381 (quoting Fallini v. United States, 56 F.3d 1378, 1380 (Fed. Cir. 1995), cert. denied, 517 U.S. 1243 (1996)). Plaintiff does not need to be aware of all relevant facts for a cause of action to accrue, the statute of limitations begins running once they are aware of sufficient facts to know that they have been wronged. See Osborn v. United States, 47 Fed. Cl. 224, 233 (2000). In the context of veterans challenging failures to receive promotions during their active

service, retirement is the latest date upon which their claims can accrue. See Tolar v. United States, 140 Fed. Cl. 659, 661 (2018). Furthermore, appeals to the relevant correction board are not taken into account for determining when a claim accrued. See Martinez v. United States, 333 F.3d at 1304.

Defendant asserts that this court does not have subject matter jurisdiction to consider plaintiff's complaint because his claims are time-barred and defendant argues that plaintiff's claims began to accrue, at the very latest, upon his retirement from the Navy on July 1, 1990. Defendant argues that because plaintiff did not file his complaint until 2019 (initially in the United States Court of Appeals for the Federal Circuit), it is time-barred. Plaintiff responds that he was the victim of a conspiracy that makes the statute of limitations inapplicable. Plaintiff applied to the Medical Corps in 1974 and was placed on the TDRL in 1975 at the rank of E-6. Plaintiff alleges the conspiracy, which, according to plaintiff, prevented him from receiving his commission, occurred during this same time period. Plaintiff also applied to the JAG Corps, to which he also requests a retroactive transfer, following his return to active duty in 1980. Plaintiff does not claim that he only now or recently became aware of the relevant facts, illustrated by the framing of his complaint as correcting an injustice "after more than forty years" and his previous applications to the BCNR. The dates referenced by plaintiff in his complaint clearly place the filing of plaintiff's current complaint beyond the six-year statute of limitations, making the allegations raised in his current complaint time-barred.

Moreover, plaintiff's most recent appeal to the BCNR is not relevant for determining if his recently filed complaint now before this court is timely. As the BCNR noted in reaching its decision following plaintiff's 2018 petition, the complaint had not been filed in a timely manner, but the BCNR had chosen to waive the statute of limitations and consider the case on its merits "in the interest of justice." That the BCNR's most recent consideration of plaintiff's petition occurred within the past six years, does not toll the original six-year statute of limitations and has no impact on how to determine when the claim accrued. See Martinez v. United States, 333 F.3d at 1304-05 ("Accordingly, the failure to seek relief from a correction board not only does not prevent the plaintiff from suing immediately, but also does not prevent the cause of action from accruing."). Reconsiderations by the BCNR after lengthy periods of time do not deprive prior BCNR decisions of their finality for statute of limitations purposes, even when they bring in material not presented to the board when making the prior decision. See Van Allen v. United States, 70 Fed. Cl. 57, 63-64 (2006) (holding that statute of limitations began to run after first BCNR opinion in 1986 and not after reconsideration opinion was issued in 1995). As plaintiff's 2018 appeal to the BCNR does not change the date of when plaintiff's claims accrued, the date of plaintiff's retirement from the armed forces on July 1, 1990, represents the final date that his claims against the government for failure to promote began to accrue, which is over thirty years ago and far outside of the applicable six-year statute of limitations. Despite plaintiff's commendable number of years of service, the statute of limitations, nonetheless, precludes jurisdiction in this court.

Additionally, although the government does not raise the issue in its motion to dismiss or in its reply to the motion to dismiss, plaintiff's claims for retroactive promotion are personnel decisions which should be treated by courts with deference. The United

States Supreme Court noted in a suit seeking judicial review of duty assignments that "orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters." Orloff v. Willoughby, 345 U.S. 83, 94 (1953); see also Adkins v. United States, 68 F.3d 1317, 1323 (Fed. Cir. 1995) (noting that the merits of decisions committed to military discretion, including promotions, are not subject to judicial review). The jurisdiction courts have is over cases of procedural error. See Voge v. United States, 842 F.2d 776, 780-81 (Fed. Cir. 1988). To state such a claim of procedural error, the plaintiff must point to a nexus between that procedural error and the adverse promotion decision. Tolar v. United States, 140 Fed. Cl. at 661 (citing Lindsay v. United States, 295 F.3d 1252, 1259 (Fed. Cir. 2002)). Plaintiff has not identified such a nexus between a procedural error and not receiving his commission or promotions, as the claims of a conspiracy regarding irregularities in his command lack documentation and support in the record before the court.

Plaintiff's allegations of a conspiracy within his command that allegedly took away or prevented his commission not only are undocumented in the record before this court, but if plaintiff is alleging a criminal conspiracy, those claims also are not within the jurisdiction of this court. To the extent that plaintiff may be asserting claims of a criminal conspiracy, this court lacks subject matter jurisdiction to adjudicate such claims. The jurisdiction of the United States Court of Federal Claims does not include jurisdiction over criminal causes of action. See Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994); see also Flippin v. United States, 146 Fed. Cl. 179 (2019) ("Such conduct is criminal in nature and beyond the subject-matter jurisdiction of this court."); Cooper v. United States, 104 Fed. Cl. 306, 312 (2012) ("[T]his court does not have jurisdiction over [plaintiff's] claims because the court may review neither criminal matters, nor the decisions of district courts." (internal citation omitted)); Mendes v. United States, 88 Fed. Cl. 759, 762, appeal dismissed, 375 F. App'x 4 (Fed. Cir. 2009); Hufford v. United States, 87 Fed. Cl. 696, 702 (2009) (holding that the United States Court of Federal Claims lacked jurisdiction over claims arising from the violation of a criminal statute); Fullard v. United States, 78 Fed. Cl. 294, 301 (2007) ("[P]laintiff alleges criminal fraud, a subject matter over which this court lacks jurisdiction." (citing 28 U.S.C. § 1491; Joshua v. United States, 17 F.3d at 379)); McCullough v. United States, 76 Fed. Cl. 1, 4 (2006) (finding that the United States Court of Federal Claims lacked jurisdiction to consider plaintiff's criminal claims), appeal dismissed, 236 F. App'x 615, reh'g denied, (Fed. Cir.), cert. denied, 552 U.S. 1050 (2007); Matthews v. United States, 72 Fed. Cl. 274, 282 (finding that the court lacked jurisdiction to consider plaintiff's criminal claims), recons. denied, 73 Fed. Cl. 524 (2006). Thus, plaintiff's criminal claims also fail.

Plaintiff also claims that his commission was taken away from him in violation of his due process rights. The United States Court of Appeals for the Federal Circuit has held that this court does not have jurisdiction to consider claims arising under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. See Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (concluding that the United States Court of Federal Claims has no jurisdiction over a due process violation under the Fifth and Fourteenth Amendments (citing LeBlanc v. United

States, 50 F.3d at 1028)); see also Smith v. United States, 709 F.3d at 1116 ("The law is well settled that the Due Process clauses of both the Fifth and Fourteenth Amendments do not mandate the payment of money and thus do not provide a cause of action under the Tucker Act." (citing LeBlanc v. United States, 50 F.3d at 1028)); In re United States, 463 F.3d 1328, 1335 n.5 (Fed. Cir. 2006) ("[B]ecause the Due Process Clause is not money-mandating, it may not provide the basis for jurisdiction under the Tucker Act."), reh'g and reh'g en banc denied (Fed. Cir. 2006), cert. denied sub nom. Scholl v. United States, 552 U.S. 940 (2007); Acadia Tech., Inc. & Global Win Tech., Ltd. v. United States, 458 F.3d 1327, 1334 (Fed. Cir. 2006); Collins v. United States, 67 F.3d 284, 288 (Fed. Cir.) ("[T]he due process clause does not obligate the government to pay money damages."), reh'g denied (Fed. Cir. 1995); Mullenberg v. United States, 857 F.2d 770, 773 (Fed. Cir. 1988) (finding that the Due Process clauses "do not trigger Tucker Act jurisdiction in the courts"); Murray v. United States, 817 F.2d 1580, 1583 (Fed. Cir. 1987) (noting that the Fifth Amendment Due Process clause does not include language mandating the payment of money damages); Vondrake v. United States, 141 Fed. Cl. 599, 602 (citing Smith v. United States, 709 F.3d at 1116), aff'd sub nom., 729 F. App'x 916 (Fed. Cir. 2019); Weir v. United States, 141 Fed. Cl. 169, 177 (2018); Maehr v. United States, 139 Fed. Cl. 1, 3-4 (2018) (stating that Smith v. United States, 709 F.3d at 1114, "remains controlling law today"), aff'd, 767 F. App'x 914 (Fed. Cir. 2019), cert. denied, 140 S. Ct. 49 (2019); Zainulabeddin v. United States, 138 Fed. Cl. 492, 505 (2018) (citing LeBlanc v. United States, 50 F.3d at 1028); Harper v. United States, 104 Fed. Cl. 287, 291 n.5 (2012); Hampel v. United States, 97 Fed. Cl. 235, 238, aff'd, 429 F. App'x 995 (Fed. Cir. 2011), cert. denied, 565 U.S. 1153 (2012). Due process claims "must be heard in District Court." Kam-Almaz v. United States, 96 Fed. Cl. at 89 (2011) (citing Acadia Tech., Inc. & Global Win Tech., Ltd. v. United States, 458 F.3d at 1334), aff'd, 682 F.3d 1364 (Fed. Cir. 2012). Therefore, this court does not have jurisdiction to review plaintiff's claim.

Plaintiff further asserts that the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., "should encourage" the return of his promotion. This court, however, lacks subject matter jurisdiction over plaintiff's ADA claims. To demonstrate that the Tucker Act provides jurisdiction over claims between a claimant and the government, the claimant must prove that the particular provision of law relied upon is money-mandating. See, e.g., United States v. Navajo Nation, 556 U.S. at 290; Ontario Power Generation, Inc. v. United States, 369 F.3d at 1301. The ADA, however, is not a money-mandating law. See Dziekonski v. United States, 120 Fed. Cl. 806, 809-10 (2015) (noting that the ADA is not a money-mandating provision that would provide the United States Court of Federal Claims with jurisdiction) (citation omitted); Shipman v. United States, 118 Fed. Cl. 701, 707 (2014) ("[T]he court does not have subject matter jurisdiction over claims alleging a violation of the Americans with Disabilities Act of 1990 ('ADA'), 42 U.S.C. § 12101 *et seq.*, because the ADA is not a money-mandating source of law.") (internal quotation marks and citation omitted). Moreover, the United States District Courts possess exclusive jurisdiction over ADA claims. See, e.g., McCauley v. United States, 38 Fed. Cl. 250, 266 (1997) (citing 42 U.S.C. § 12117(a)) (finding the district courts had exclusive jurisdiction over claims brought under the ADA), aff'd, 152 F.3d 948 (Fed. Cir. 1998). Thus, this court is not the proper forum to seek judicial relief under the ADA. See

id.; see Maclin v. United States, 121 Fed. Cl. 66, 67-68 (2015) ("Further, Plaintiff's complaints of violations of the ADA are also outside the Court's jurisdiction as federal district courts have exclusive jurisdiction over ADA claims."); Johnson v. United States, 97 Fed. Cl. 560, 564 (2011) ("The Court notes that Federal district courts have exclusive jurisdiction over the ADA and Rehabilitation Act claims."); Searles v. United States, 88 Fed. Cl. 801, 805 (2009) ("Indeed, the ADA does not apply to the federal government as an employer and district courts hold exclusive jurisdiction over ADA claims."). Therefore, this court does not have jurisdiction over plaintiff's ADA claims.

CONCLUSION

For the reasons stated above, this court lacks jurisdiction to hear plaintiff's claims, and plaintiff's claims must be dismissed. Defendant's motion to dismiss plaintiff's complaint is **GRANTED**. Plaintiff's complaint is **DISMISSED**. The Clerk's Office shall enter **JUDGMENT** consistent with this Opinion.

IT IS SO ORDERED.

s/Marian Blank Horn
MARIAN BLANK HORN
Judge

WASHINGTON, D.C. 20370

TGM:ce
3349-82
20 July 1983

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

Subj: DTI Lee HOLLAND, Jr., REDACTED USN
Review of naval record; reconsideration

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

Encl: (1) DD Form 149 dtd 22Feb82, w/attachments, incl. counsel's brief and reply to advisory opinions
(2) NMPC-322:JR:rj memo of 26Jul82
(3) NMPC-221 memo of 4Aug82
(4) Chief BUMED ltr BUMED-261:RSH:jab of 21Oct82
(5) Microfiche record

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 removing therefrom his special performance evaluation report for the period 30 January 1974 to 9 May 1974 (copy at Tab A of enclosure (1)). He previously petitioned the Board for removal of that evaluation and was denied on 8 September 1975. Petitioner also requests the removal from his record of the two Enlisted Performance Record (Page 9) entries dated 9 May 1974 (copy at Tab B of enclosure (1)), the first reflecting a mark of "UNS" (Unsatisfactory-Serious) in "Individual Productivity" and the second indicating the withdrawal of Petitioner's recommendation for advancement to DTC (Chief Dental Technician). In addition, Petitioner requests the removal from his record of the Administrative Remarks (Page 13) entry dated 14 May 1974 (copy at Tab C of enclosure (1)), also referring to the mark of "UNS" in "Individual Productivity" and the withdrawal of Petitioner's recommendation for advancement to DTC. Petitioner further requests that the Commanding Officer, Naval Dental Clinic, Long Beach, California letter 01:WGH:llh over 1120 Ser: 25 of 8 July 1974, Subject: Withholding of Appointment in Medical Service Corps in the case of [Petitioner] (copy at Tab D of enclosure (1)) and related correspondence be expunged from his record. Petitioner also requests that his record be corrected by reinstating his appointment to the grade of ensign in the Medical Service Corps (MSC) effective 1 August 1974 and by effecting his transfer to the Judge Advocate General Corps (JAGC) as of 1 May 1980. Finally, Petitioner requests the insertion into his record

of his performance evaluation report for the period 1 June 1973 to 30 January 1974 (copy at Tab E of enclosure (1)). Review of his record reveals that this particular evaluation report is already on file there.

2. The Board reviewed Petitioner's allegations of error and injustice on 13 July 1983 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, consisting of Messrs. Gale and Leisz and Ms. Roy, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Prior to filing his application with this Board, Petitioner exhausted all administrative remedies afforded him under existing law and regulations within the Department of the Navy.

b. Petitioner's naval record reveals that he was the subject of a medical board in 1966 for Reiter's syndrome (conjunctivitis, urethritis and arthritis). As a result of that board, he was placed on five months' limited duty, after which he was returned to full duty. In January 1974, Petitioner applied for an appointment as an officer in the MSC. He experienced no further significant medical problems until early spring 1974, when he suffered pain in his joints and swelling of both knees and his right wrist. After several treatments, he was hospitalized on 14 May 1974. On 29 May 1974, written notification was forwarded to Petitioner informing him of his selection for appointment to ensign in the MSC (copy at Tab F of enclosure (1)). The letter of notification indicated that his date of rank would be 1 August 1974. While Petitioner was in the hospital, he underwent a physical examination, the result of which was a diagnosis of rheumatoid arthritis and a determination that he was unfit for full duty. As a consequence of that examination, Petitioner's appointment documents were not issued.

c. The contested special performance evaluation report for the period 30 January to 9 May 1974, dated 9 October 1974, was submitted by reason of a perceived significant decline in Petitioner's performance of duty. There is evidence indicating that this is the later to two versions of this report. Petitioner provides a copy of a special report for the period 30 January to 14 May 1974, dated 14 May 1974 (copy at Tab G of enclosure (1)). This report, signed by the same officer who signed the report at issue, reflects marks of "UNS" in Blocks 5 and 6 ("Individual

Productivity" ∃ "Flexibility", respectively) and a mark of "UNM" (Unsatisfactory-Minor) in Block 12 ("Cooperation"). A mark of "M" (Minor) is reflected in Block 30 ("Behavioral Infractions"). The remaining trait mark blocks are left blank, as are the duty assignment recommendations in Blocks 32 through 39. The narrative comments in Block 2 are adverse in nature and are continued in Block 56. This report does not appear in Petitioner's naval record. The contested special report, which is in Petitioner's record, begins on the same date as the 14 May 1974 version, but it ends five days earlier. The narrative comments in Block 2 of the contested report are identical to those in Block 2 of the 14 May 1974 version; however, there are no narrative comments in Block 56 of the report at issue, although Block 2 of that report ends as follows: "(see Block 56)". The evaluation marks reflected in Blocks 5, 6, 12 and 30 of the contested report are identical to those reflected in the corresponding blocks of the 14 May 1974 version. The blocks that had been left blank in the 14 May 1974 version were marked "NOB" (Not Observed) in the report at issue, with the exception that this report reflected a mark of "UNS" in Block 17 ("Overall Performance") and marks of "N" (Not Recommended) in Blocks 32 through 39. The record contains a statement (copy at Tab H of enclosure (1)) submitted by Petitioner concerning his special evaluation report. This statement is dated 20 September 1974. It appears that this statement was submitted in response to the 14 May 1974 version of the report, inasmuch as it predates the contested report, dated 9 October 1974; the statement refers to comments appearing in Block 56 of the 14 May 1974 version, whereas Block 56 is blank in the 9 October 1974 version; and it does not address Block 17, which is blank in the earlier version and marked "UNS" in the later. Petitioner's signature does not appear on the contested report of 9 October 1974.

d. The special evaluation in question is the basis for the disputed entries on pages 9 and 13 of Petitioner's service record. These entries are not signed by Petitioner.

e. The contested letter of 8 July 1974 (copy at Tab D of enclosure (1)) to the Commander, Navy Recruiting Command, is a request from Petitioner's commanding officer that Petitioner's appointment as an ensign, MSC be withheld. In this letter, he stated that during the period 1 February 1974 to 14 May 1974, Petitioner's performance of duty had declined so as to warrant an adverse special evaluation report and the withdrawal of his recommendation for Petitioner's advancement to chief petty officer. The list of enclosures on the first page of this letter

reflected a special evaluation report dated 14 May 1974. As a result of the 8 July 1974 letter, the Commander, Navy Recruiting Command forwarded a letter dated 15 October 1974 (copy at Tab I of enclosure (1)) to the Chief of Naval Personnel recommending that Petitioner "...not be tendered an appointment in the Medical Service Corps [even] should he be found physically qualified for such appointment." This letter further stated that Petitioner's appointment was being retained pending further instructions from the Chief of Naval Personnel. It specifically cited the commanding officer's letter of 8 July 1974 and the adverse special performance evaluation included with it. Although each of the letters dated 8 July 1974 and 15 October 1974 reflects that a copy was provided to Petitioner, there is no indication that he was made aware that either letter would be placed in his record or that he could attach a rebuttal statement.

f. As the result of the findings of a Physical Evaluation Board conducted on 18 December 1974, Petitioner was transferred to the Temporary Disability Retired List (TDRL) in February 1975. While he was on the TDRL, he attended Law school. On 31 January 1980, the Secretary of the Navy determined that he was physically fit for active duty. On 1 October 1980 he was removed from the TDRL. He reenlisted on 2 October 1980. Upon his return to active duty, he applied unsuccessfully for a JAGC commission.

g. Petitioner contends that the contested material reflecting adversely on his performance was placed in his record without his knowledge, in violation of his rights under Article 1110, U.S. Navy Regulations, 1973. In further support of his request for removal of the special evaluation report at issue, he provides a statement (copy at Tab J to enclosure (1)) from the same officer who signed that report. That officer states that he submitted the special evaluation and the letter of 8 July 1974 recommending withholding of Petitioner's appointment to the MSC on the basis of the recommendation of Petitioner's immediate supervisor. He states that the immediate supervisor believed that Petitioner was shirking his duties by making frequent visits to the clinic and hospital. He further states that when he signed the special evaluation, "...he was not aware of all the medical reasons why [Petitioner] had been going to sick call so often." and that he now realizes that Petitioner "...actually had legitimate medical problems..." and that "...his frequent visits to sick call... were not an attempt to shirk his duties." He states that "...The special adverse evaluation and the recommendation for withholding of [Petitioner's] MSC appointment were based on incomplete medical information..." He concludes by stating that had he known all the medical facts about Petitioner's condition at the time the adverse special evaluation and the recommendation to withhold the MSC

NEXUS

appointment were prepared, he would not have approved the evaluation and he would not have recommended withholding of Petitioner's appointment to the MSC.

h. Petitioner contends that he should not have been denied his appointment to the MSC. He asserts that neither the contested material reflecting adversely on his performance nor his physical disability constituted a valid basis for the withholding of the appointment. With respect to the physical disability, he cites Article 3860400.2.d. of the Bureau of Naval Personnel Manual (BUPERSMAN), which reads, in pertinent part, as follows:

> Unless entitled to a higher grade under some other provision of law, any member who is retired or whose name is placed on the Temporary Disability Retired List under authority contained in 10 U.S.C. 1201 et. seq. is entitled under the provisions of 10 U.S.C. 1372 to the highest grade equivalent to the following:...
>
> d. The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was found to exist as a result of his physical examination for promotion.

Petitioner contends that the physical disability that made him ineligible for appointment to the MSC was found to exist as a result of a physical examination for promotion.

i. Petitioner alleges that his application for appointment to the JAGC would have been approved, but for the contested material that reflected unfavorably on his performance.

j. The advisory opinion at enclosure (2), submitted by the Military Personnel Evaluation Division, Naval Military Personnel Command (NMPC-322), recommends that Petitioner's request for the removal of the contested Administrative Remarks (Page 13) entry be approved and that the remainder of his request be denied. In this connection, the opinion states that there is no evidence to indicate that Petitioner was afforded an opportunity to comment on that entry and concludes that it was adverse material placed in Petitioner's record in violation of his rights under Article 1110, U.S. Navy Regulations, 1973. The opinion states that the special evaluation report for the period 30 January 1974 to 9 May 1974 contains adverse marks and comments, that Petitioner submitted a statement concerning that report, and that his statement and the command endorsement are filed in his headquarters service record.

On that basis, the opinion concludes that he was afforded his rights under Article 1110 U.S. Navy Regulations, 1973. The opinion further states that inasmuch as the contested special evaluation for the period ending 9 May 1974 is a valid report, the challenged service record entries appearing on the Enlisted Performance Record (Page 9) are also valid. NMPC-322 states that although Petitioner provided a copy of the 8 July 1974 letter recommending that his appointment to the Medical Service Corps be withheld, he "...failed to comment on the letter."

k. The advisory opinion at enclosure (3), submitted by the Enlisted Advancements Branch, Naval Military Personnel Command (NMPC-221), recommends denial of Petitioner's request for removal of the Administrative Remarks (Page 13) and the Enlisted Performance Record (Page 9) entries reflecting withdrawal of his recommendation for advancement. This opinion states that "Withdrawing a recommendation for advancement prior to an advancement authority being issued does not require a member to sign the page 13 entry nor is a special evaluation required in this case." The opinion concludes that the Page 13 entries are proper and that there is no basis for their removal.

l. The advisory opinion at enclosure (4), submitted by the Bureau of Medicine and Surgery (BUMED-26l), states that "There is no recorded evidence of excessive medical complaint by way of overly frequent or unnecessary medical sick call visits.", that "...the record reflects reasonable and appropriate medical treatment..." and that "...the petition by the member is without direct relationship to his medical condition." BUMED concludes that "...the merit of the petition should be decided from the non-medical aspects of the case."

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting the removal of the special performance evaluation report for the period 30 January 1974 to 9 May 1974. In this connection, the Board observes that the evaluation is defective on its face, in that Block 2 indicates that there are additional narrative comments in Block 56, whereas Block 56 is blank. Moreover, the Board finds no evidence to show that this adverse evaluation was referred to Petitioner for comment. As indicated at paragraph 3.c. above, the Board is persuaded that Petitioner's rebuttal of 20 September 1974 addresses an evaluation substantially different from the one on file in his record. Accordingly, the Board concludes that the

contested evalu ..on was placed in the record without affording him an opportunity to comment on it, in violation of his rights under Article 1110, U.S. Navy Regulations, 1973. The Board finds that the contested entries on pages 9 and 13, the Commanding Officer, Naval Dental Clinic, Long Beach, California letter of 8 July 1974 and the Commander, Navy Recruiting Command letter of 15 October 1974 were based, in ..ole or in part, on either the 14 May or the 9 October 1974 version of the special evaluation report. Inasmuch as the version dated 14 May 1974 is not on file in Petitioner's record, and the Board considers that the version of record ought to be stricken, the Board concludes that the contested Page 9 and Page 13 entries and the letters of 8 July and 15 October 1974 should be expunged from the record as well. In addition, the Board agrees with Petitioner that the contested Page 9 and Page 13 entries and the letters of 8 July and 15 October 1974 are adverse. In the absence of evidence to show that Petitioner was afforded an opportunity to comment on these items, the Board finds that they too were placed in his record in violation of his rights under Article 1110.

The Board finds that Petitioner's physical disability constituted a valid basis for denying his appointment to the MSC. In that regard, the Board concludes that the legal authorities cited by Petitioner are inapplicable, because an original appointment as an officer does not equate to a promotion.

The Board is unable to find that Petitioner would have been appointed to the JAGC, but for the unfavorable material whose removal the Board recommends. The Board considers it generally inappropriate as a matter of policy to usurp the discretion of the service in determining who should be offered commissioned status.

In view of the foregoing, the Board recommends the following limited corrective action.

RECOMMENDATION:

a. That there be removed from Petitioner's naval record the following performance evaluation report and related material, including Petitioner's rebuttal of 20 September 1974 and the endorsements on that letter;

Date of Report	Reporting Senior	Period of Report From	To
9Oct74	CAPT R. E. Shirley	30Jan74	9May74

b. That there be inserted in his naval record a memorandum in place of the removed report, containing appropriate identifying

data concerning [illegible] report; that such remo[illegible]dur state that the report has been r[illegible]ved by order of the Secretary of the Navy in accordance with the provisions of Federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That the magnetic tape or microfilm maintained by the Naval Military Personnel Command be corrected accordingly.

d. Thatthere be removed from Petitioner's record the two Enlisted Performance Record (Page 9) entries dated 9 May 1974, reflecting the assignment of a mark of "UNS" in "Individual Productivity" and the withdrawal of Petitioner's recommendation for advancement to DTC.

e. That there be removed from Petitioner's record the Administrative Remarks (Page 13) entry dated 9 May 1974 indicating the assignment of a mark of "UNS" in "Individual Productivity" and the withdrawal of Petitioner's recommendation for advancement to DTC.

f. That the Commanding Officer, Naval Dental Clinic, Long Beach, California letter 01:WGH:llh over 1120 Ser: 25 of 8 July 1974 with enclosures and endorsements be removed from the record.

g. That the Commander, Navy Recruiting Command letter CNRC/315/ka 1120 Ser: 4979 of 15 October 1974 with enclosures and endorsements be removed from the record.

h. That any material or entries inconsistent with or relating to the Board's recommendations 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.

i. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with this report of the Board's proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

j. That the remainder of 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.

Jonathan S. Ruskin

ROBERT D. ZSALMAN
Recorder

JONATHAN S. RUSKIN
Acting Recorder

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

Robert D. Zsenak

R W. DEAN PFEIFFER

Reviewed and approved: 22 JUL 1983

Chapman B Cox

CHAPMAN B. COX
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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

TDK
Docket No. 4661-18
AUG 27 2019

DTC LEE HOLLAND JR USN RET
164 RAINBOW DR 6439
LIVINGSTON TX 77399-1064

Dear Chief Holland Jr.,

This letter is in reference to your reconsideration request, which was previously denied on 8 September 1975 and 22 July 1983. You previously petitioned the Board for Correction of Naval Records (Board) and were advised that your application had been disapproved. Your case was reconsidered in accordance with Board procedures that conform to *Lipsman v. Sec'y of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 April 2019. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion (AO) by Navy Personnel Command (NPC) memorandum 5420 PERS-80 of 22 October 2018, which a copy was previously provided to you for comment.

On 11 May 1961, you enlisted into the Navy. On 14 May 1974, you were admitted to the Naval Regional Medical Center in Long Beach, CA. On 29 May 1974, you were notified of being selected for appointment as Ensign in the Medical Services Corps (MSC). On 23 October 1974, you were referred to a Physical Evaluation Board (PEB) by the Medical Evaluation Board (MEB). On 26 February 1975, you were transferred to the Temporary Disability Retirement List

C.

(TDRL). On 8 September 1975, your application you submitted this Board was denied. On 2 October 1980, you reenlisted into active duty after not being selected for the Judge Advocate General (JAG) Corps. On 22 July 1983, your application to his Board was partially granted. On 28 February 1989, you were transferred to the Fleet Reserve. On 1 July 1990, you were transferred to the retired list.

You requested your appointment be restored to 25 February 1975 and receive incremental grade advancements to the rank of O-5 or O-6 as of July 1990. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that you did not meet the qualifications to receive your appointment due to not being physically qualified. Additionally, since you were never commissioned, you were never eligible for any officer advancements.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In the absence of new matters for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

It is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

ELIZABETH A. HILL
Executive Director

APPLICATION FOR CORRECTION OF MILITARY RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552

(Please read Privacy Act Statement and Instructions on back BEFORE completing this application.)

OMB No. 0704-0003
OMB approval expires Dec 31, 2017

RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS PAGE.

1. APPLICANT DATA *(The person whose record you are requesting to be corrected.)*

a. BRANCH OF SERVICE (X one)	ARMY	NAVY	AIR FORCE	MARINE CORPS	COAST GUARD
		X			

b. NAME (Print - Last, First, Middle Initial)	c. PRESENT OR LAST PAY GRADE	d. SERVICE NUMBER (If applicable)	e. SSN
HOLLAND, LEE JR.	CPO E-7		[redacted]-7538

2. PRESENT STATUS WITH RESPECT TO THE ARMED SERVICES (Active Duty, Reserve, National Guard, Retired, Discharged, Deceased)	3. TYPE OF DISCHARGE (If by court-martial, state the type of court.)	4. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY (YYYYMMDD)
RETIRED	HONORABLE	01 MAR 89

5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED AS FOLLOWS: *(Entry required)*

SERVICE MEMBER'S APPOINTMENT (PROMOTION) BE RESTORED TO THE 25TH OF FEBRUARY, 1975, WHEN HE WAS PLACED ON THE TEMPORARY DISABILITY RETIRED) LIST; AND, GRADE-ADVANCEMENTS TO BE MADE, AT THE NORMAL INCREMENTAL PERIODS-OF-TIME, BY THE FIRST OF JULY 1990, WHEN SERVICE MEMBER WAS FORMALLY RETIRED IN ACCORDANCE WITH 10 U.S.C. 6331, HIS RANK, (AT THE BOARD'S DISCRETION), BE AT THE LEVEL OF O-5, OR O-6.

6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS: *(Entry required)*

WHILE THE WORDS "COMMISSION" AND "APPOINTMENT" ARE "SPECIFIC WORDS" WITH "SPECIFIC MEANINGS", COMMON-SENSE WOULD NOT PRECLUDE THEM BEING "INCLUSIVE" RATHER THEY "EXCLUSIVE." THEY MAY ALSO BE "WONDERFUL" AND "STUPENDOUS PROMOTIONS" FOR PRIOR ENLISTED PERSONNEL. THE BOARD'S FIRST DECISION, NARROWLY DEFINING 10 U.S.C. 1201, ET. SEQ., HAS HAD AN EXTREMELY ADVERSE, AND LIFE-LONG IMPACT UPON SERVICE MEMBER.

a. IS THIS A REQUEST FOR RECONSIDERATION OF A PRIOR APPEAL?	YES	NO	b. IF YES, WHAT WAS THE DOCKET NUMBER?	c. DATE OF THE DECISION
	X		3349-82	1983

7. ORGANIZATION AND APPROXIMATE DATE (YYYYMMDD) AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED *(Entry required)* LONG BEACH NAVAL REGIONAL HOSPITAL, 25 FEBRUARY 1975

8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE

a. DATE OF DISCOVERY (YYYYMMDD)	b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THE APPLICATION.
1980-	IT WOULD CAST THE U.S. NAVY IN A MORE "FAVORABLE PUBLIC RELATIONS LIGHT," NOT TO "LIFE-LONG" PUNISH A TEMPORARILY DISABLED INDIVIDUAL."

9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS: *(If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)*

(1) SENATE CONFIRMATION; (2) CHIEF, M.S.C. APPOINTMENT CONGRATULATIONS LETTER; (3) CERTIFICATE OF RELEASE DD 214; (4) CERTIFICATE OF RETIREMENT; (5) PRESIDENT'S LETTER

10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. *(At no expense to the Government)* (X one) [X] YES. THE BOARD WILL DETERMINE IF WARRANTED. [ ] NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENCE.

11.a. COUNSEL (If any) NAME (Last, First, Middle Initial) and ADDRESS (Include ZIP Code)	b. TELEPHONE (Include Area Code)
	c. E-MAIL ADDRESS
	d. FAX NUMBER (Include Area Code)

e. I WOULD LIKE ALL CORRESPONDENCE/DOCUMENTS SENT TO ME ELECTRONICALLY. [ ] YES [ ] NO

12. APPLICANT MUST SIGN IN ITEM 15 BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* **and relationship by marking one box below.**

[ ] SPOUSE [ ] WIDOW [ ] WIDOWER [ ] NEXT OF KIN [ ] LEGAL REPRESENTATIVE [ ] OTHER *(Specify)*

13.a. COMPLETE CURRENT ADDRESS (Include ZIP Code) OF APPLICANT OR PERSON IN ITEM 12 ABOVE (Forward notification of all changes of address.)	b. TELEPHONE (Include Area Code)
164 RAINBOW DR., # 6439 LIVINGSTON, TEXAS, 77399-1064	(512) 784-3858
	c. E-MAIL ADDRESS leeharder.holland@gmail.com
	d. FAX NUMBER (Include Area Code)

14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

CASE NUMBER *(Do not write in this space.)*

15. SIGNATURE (Applicant must sign here.)	16. DATE SIGNED (YYYYMMDD)
Lee Holland Jr.	2018 05 14

DD FORM 149, DEC 2014 PREVIOUS EDITION IS OBSOLETE. Adobe Designer 9.0

C. (2)

DEPARTMENT OF THE NAVY

NAVY RECRUITING COMMAND
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

IN REPLY REFER TO
CNRC/14/en

15 FEB 1983

Mr. James R. Klimaski
Attorney at Law
1712 N. Street, N.W.
Washington, D.C. 20036

Dear Mr. Klimaski,

This is in reply to your request under the Freedom of Information Act on behalf of Petty Officer Lee Holland, USN, [redacted]-7538.

Enclosed is a list of all persons nominated for the Medical Service Corps in 1974 whose appointments were approved by the U.S. Senate. We are unable to comply with your request for a copy of the appointment documents prepared for Petty Officer Holland as Ensign, Medical Service Corps, U. S. Navy, as that document was cancelled and subsequently destroyed.

It is hoped that this information satisfactorily answers your request.

By direction of the Commander, Navy Recruiting Command:

Sincerely,

E. D. BRACK
Chief Warrant Officer, U. S. Navy
Director, Administration and
Headquarters Personnel Division

NUMBER	NAME
1.	MCDOUGALL, Gordon R.
2.	CLARK, Bobby G.
3.	KROUTIL, Michael L.
4.	TATE, Arthur C.
5.	SIMMONS, Donald L.
6.	SMITH, Eric M.
7.	ROBSON, Joseph R.
8.	COLFACK, Brian R.
9.	HOLLAND, Lee, Jr.
10.	HORWHAT, Paul, Jr.
11.	LAWSON, Michael P.
12.	STODDARD, Sheldon T.
13.	MCCLURE, Charles D.
14.	GEORGE, James A.
15.	BOEHM, Russell K.
16.	CARSTEN, John E.
17.	BETSWORTH, Richard D.
18.	KILGORE, Larry L.
19.	PATTON, Robert L.
20.	MORAN, Raymond L.
21.	HALL, John W.
22.	MARTHOUSE, Robert C. Jr
23.	STANDARD, Bob E.
24.	MENIFEE, James T.
25.	TAYLOR, John O.
26.	DAMSTROM, Gayle H.
27.	GALLIS, John N.
28.	SHORE, John E.
29.	RICE, Stephen C.
30.	RUPP, Gary L.
31.	SHEHANE, Claude T.
32.	WOCHER, John C.
33.	SMITH, Albert J.
34.	SWAFFORD, James J. Jr.
35.	CRIBB, Danny W.
36.	MASKULAK, George M.
37.	WYATT, Edward P. Jr.

File/OPO File

Out

NAVCRUITDIST SNT
TELEX 767-528
R131800Z MAY 80
TO NAVRESPERSCEN NEW ORLEANS LA
INFO NAVCRUITDIST SAN DIEGO CA
COMNAVMILPERSCOM WASHINGTON DC
BT
UNCLAS //N01000//
COMNAVMILPERSCOM FOR NMPC 242
SUBJ: REEN ICO DT1 LEE HOLLAND JR USN-RET [redacted]-7538
A. NAVCRUITDIST SAN DIEGO CA MSG R121510Z MAY 80
B. NAVRESPERCEN NEW ORLEANS LTR 412/RJ/AC(P) [redacted] 7538
OF 18 MAR 80
1. IN RESPONSE TO REF A SNM SIGNED ENCL 1 OF REF B CONSENTING TO REENLISTMENT. HOWEVER DT1 HOLLAND IS QUALIFIED AND HAS APPLIED FOR A COMMISSION IN THE JAG CORPS. IF SNM IS NOT SELECTED FOR JAG CORPS, REENLISTMENT AS A DT1 WILL BE IMMEDIATELY EFFECTED. NOTIFICATION OF SELECTION IS EXPECTED IN APPROXIMATELY 5 WEEKS.
BT
•
CRSWLAFB A FTW

Ok

CERTIFIED TO BE A TRUE COPY
[signature]
CAPT., DC, USN

E.

STATE BAR OF TEXAS

Office of the General Counsel

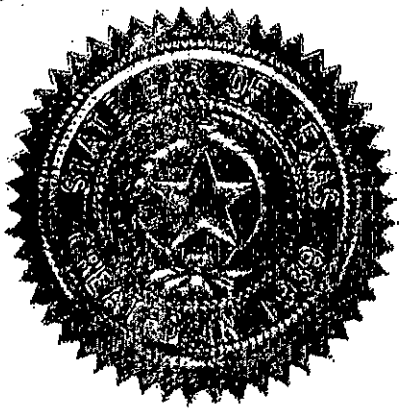
January 25, 1990

TO WHOM IT MAY CONCERN:

This is to certify that Lee Holland was licensed to practice law in Texas on May 26, 1980, and is a member in good standing of the State Bar of Texas. No public disciplinary action involving professional misconduct has been taken against his law license.

Frank J. Douthitt
General Counsel

FJD/kh



UNIVERSITY OF ARIZONA

LEE HOLLAND

DOCTOR OF LAW

1979

F.