



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

HD:hd
Docket No: 01683-01
15 June 2001

L [REDACTED] USN
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested that your active duty service obligation be reduced from eight to seven years.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 June 2001. 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, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Chief of Naval Operations dated 25 April 2001 with enclosures and the Bureau of Naval Personnel dated 30 April 2001, copies of which are attached. The Board also considered your letter dated 30 May 2001 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board found your eight-year obligation was established by statute and not subject to change by contractual agreement. Further, they particularly noted you did not object to your orders, which correctly reflected the eight-year obligation. They felt you would not be entitled to relief, even if you were correct in asserting that two other named lieutenants had their obligations reduced. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

1683-01

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,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, DC 20350-2000

1683-01

IN REPLY REFER TO

1301
SER N13/01K094
25 April 2001

From: Head, Officer Personnel Plans and Policy Branch (N131)
To: Board for Correction of Naval Records Coordinator
(PERS-00ZCB)

Subj: REQUEST FOR ADMINISTRATIVE OPINION ICO [REDACTED]
[REDACTED] USN, [REDACTED] (BCNR CASE [REDACTED])

Ref: (a) BCNR PACKAGE ICO [REDACTED] USN,
[REDACTED] CASE [REDACTED]

- Encl: (1) Title 10, U. S. Code, Section 653 - Minimum service requirement for certain flight crew positions.
(2) CNO Policy Decision #15-130-90: Active Duty Service Obligations for Aviation Officers.
(3) BUPERS ORDER: [REDACTED] (PERS 432N)
OFFICIAL CHANGE OF DUTY ORDERS FOR [REDACTED]
[REDACTED] USNR

1. This administrative opinion provided at the request of BCNR Coordinator. Per reference (a), DD Form 149 blocks 8 and 9, [REDACTED] requests that his Aviation Active Duty Service Obligation be reviewed.

2. Enclosed in reference (a) is a copy of NAVCRUIT form 1110/106A - Aviation Officer Candidate (1395) Program Service Agreement signed by [REDACTED] on 15 July 1993. Paragraph 2 of this form indicates that [REDACTED] need to serve on active duty for a period of seven years from designation as a Naval Aviator. Following his designation as a Naval Aviator in November 1995, [REDACTED] was assigned an eight-year active duty service obligation (ADSO) in accordance with Title 10 U.S. Code (Enclosure (1)) and Navy Policy (enclosure (2)).

3. Per Enclosure (1), minimum service obligation for completion of training in fixed-wing jet aircraft is 8 years for those who entered into an active duty agreement after October 1, 1990 and who began undergraduate pilot training after 30 September, 1990. Navy Policy Decision Memorandum (paragraph 3-a of enclosure (2)), dated 18 October 1990 directs the immediate implementation of the eight-year ADSO for fixed-wing jet pilots for those entering through Aviation Officer Candidate School (AOCS).

Service: LEXSTAT®

TOC: United States Code Service: Code, Const. Rules, Conventions & Public Laws : / : CHAPTER 37, GENERAL SERVICE REQUIREMENTS : § 653. Minimum service requirement for certain flight crew positions

Citation: 10 usc 653

10 USCS § 653

UNITED STATES CODE SERVICE
Copyright 2000, LEXIS Law Publishing, a division of Reed Elsevier Inc.
All rights reserved.

*** CURRENT THROUGH P.L. 106-580, APPROVED 12/29/00 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 37. GENERAL SERVICE REQUIREMENTS

10 USCS § 653 (2000)

§ 653. Minimum service requirement for certain flight crew positions

(a) Pilots. The minimum service obligation of any member who successfully completes training in the armed forces as a pilot shall be 8 years, if the member is trained to fly fixed-wing jet aircraft, or 6 years, if the member is trained to fly any other type of aircraft.

(b) Navigators and naval flight officers. The minimum service obligation of any member who successfully completes training in the armed forces as a navigator or naval flight officer shall be 6 years.

(c) Definition. In this section, the term "service obligation" means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve required to be served after--

(1) completion of undergraduate pilot training in the case of training, as a pilot;

(2) completion of undergraduate navigator training, in the case of training as a navigator;

or

(3) completion of undergraduate training as a naval flight officer, in the case of training as a naval flight officer.

HISTORY:

(Added Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part D, § 634(a)(1), 103 Stat. 1454; Nov. 5, 1990, P.L. 101-510, Div A, Title XIV, Part H, § 1484(k)(3), 104 Stat. 1719; Oct. 23, 1992, P.L. 102-484, Div A, Title V, Subtitle A, § 506(a), 106 Stat. 2404.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1990. Act Nov. 5, 1990, in subsec. (a), substituted "or" for "and" before "6 years"; in subsec. (c), in paras. (1), (2), and (3), inserted a comma before "in the case of".

1992. Act Oct. 23, 1992 (effective 11/29/89 as provided by § 506(b) of such Act, which appears as a note to this section), in subsecs. (a) and (b), substituted "service obligation" for "active duty obligation"; and, in subsec. (c), substituted "the term 'service obligation' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve" for "the term 'active duty

obligation' means the period of active duty".

Other provisions:

Application of section. Act Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part D, § 634(b), 103 Stat. 1454, provides:

"(1) Except as provided in paragraphs (2) and (3), section 653 of title 10, United States Code, as added by subsection (a)(1), shall apply to persons who begin undergraduate pilot training, undergraduate navigator training, or undergraduate naval flight officer training, as the case may be, after September 30, 1990.

"(2) Such section shall apply to persons who graduate from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the Coast Guard Academy after December 31, 1991, and to persons who satisfactorily complete the academic and military requirements of the Senior Reserve Officers' Training Corps program (provided for in chapter 103 of title 10, United States Code [10 USCS §§ 2101 et seq.]) after December 31, 1991.

"(3) The minimum service requirements provided for such section shall not apply in the case of any person who entered into an agreement with the Secretary concerned before October 1, 1990, and who is obligated under the terms of such agreement to serve on active duty for a period less than the applicable period specified in section 653 of such title.

"(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(8) of title 10, United States Code."

Effective date of 1992 amendment. Act Oct. 23, 1992, P.L. 102-484, Div A, Title V, § 506 (b), 106 Stat. 2404, provided: "The amendments made by subsection (a) shall take effect as of November 29, 1989."

Service: LEXSTAT®

TOC: United States Code Service: Code, Const, Rules, Conventions & Public Laws : / . . . / : CHAPTER 37.
GENERAL SERVICE REQUIREMENTS : § 653. Minimum service requirement for certain flight crew positions

Citation: 10 usc 653

View: Full

Date/Time: Friday, March 16, 2001 - 11:15 AM EST

[About LEXIS-NEXIS | Terms and Conditions](#)

Copyright © 2001 LEXIS-NEXIS Group. All rights reserved.

1683-01



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

1301
Ser 130E2/OU576024
18 October 1990

From: Chief of Naval Operations

Subj: POLICY DECISION ██████████ ACTIVE DUTY SERVICE
OBLIGATIONS FOR AVIATION OFFICERS

- Ref: (a) Public Law 101-189, 29 Nov 89, Part D, Section 634
- (b) NAVPERS 15560A (NAVMILPERSMAN)
- (c) NAVPERS 15559A (Officer Transfer Manual)
- (d) Program Authorization 106 (Aviation Officer Candidates) of 19 Oct 88
- (e) Program Authorization 108 (Naval Aviation Cadets) of 19 Oct 88

1. Reference (a) established minimum Active Duty Service Obligations (ADSOs) for aviators. The length of ADSOs is based on the type of undergraduate flight training received. As has previously been the case, the period of obligation begins at receipt of wings. The Services have the authority to assign ADSOs longer than those set forth in reference (a), but must comply with the following minimums:

- a. Fixed wing jet pilots: 8 years
- b. Other pilots (prop/helo): 6 years
- c. Naval flight officers/navigationers: 6 years

2. To conform with reference (a), OP-01 has directed implementation of ADSOs in accordance with the following:

- a. Fixed wing jet pilots: 8 years (statutory minimum)
- b. Prop/helo pilots: 7 years (no change to current ADSO)
- c. Naval flight officers: 6 years (no change to current ADSO)

3. Effective dates of 8 year ADSO for jet pilot training:

a. Immediately: For those who enter an agreement for flight training through sources other than service academies and NROTC (e.g., AOCs, lateral transfers from other officer designators).

b. 1 January 1992: For those who enter flight training from a service academy or NROTC and who graduate on or after 1 Jan 92.

Subj: POLICY DECISION ██████████ ACTIVE DUTY SERVICE
OBLIGATION FOR AVIATION OFFICERS

4. The ultimate pilot training pipeline (jet, prop, helo) is normally not known until a candidate has completed the primary phase of training. Therefore, enlistment contracts, initial orders to flight training, and other documents pertaining to the ADSO for pilot candidates must be worded to reflect the potential that either a 7 or 8 year obligation will be incurred, depending on the pipeline entered (example: "Upon completion of pilot training, candidates will incur an active duty obligation of 7 years (8 years for jet training)").

5. Action required:

a. NMPC-4: Make appropriate changes to Article 6610360 of reference (b) and Articles 1504A and 1504C of reference (c). (Note: ensure effective date of 8 year jet pilot ADSO for service academy/NROTC graduates is clearly defined).

b. OP-11: Make appropriate changes to references (d) and (e).

6. This Policy Decision is cancelled when required action has been taken. OP-13 point of contact: ██████████ OP-130E2, AV 223-2306, commercial ██████████

██████████
Director, Military
Personnel Policy
Division

Distribution:
CNET (N-1, N-5)
CNMPC (NMPC-4)
SUPERINTENDENT, USNA
CNRC (N-31)
CNO (OP-11)

Copy to:
CNO (OP-01, OP-01A, OP-01BA, OP-05)
CNATRA (N-3)

SECTIONAL MESSAGE

UNCLASSIFIED

SECTIONAL MESSAGE

ARLINGTON ANNEX MESSAGE CENTER

7682-01

ROUTINE ZYUW RUEACNP4018 3322059

R 281219Z NOV 95 ZYB
FM CHNAVPER WASHINGTON DC//PERS432/PERS4G2//
TO CONTRAWING TWO KINGSVILLE TX//JJJ//
SEACONRON FOUR ONE//JJJ//
PERSUPPDET KINGSVILLE TX //JJJ//
PERSUPPDET NORTH ISLAND CA //JJJ//

UNCLAS //NO1321// SECTION 01 OF 02
MSGID/GENADMIN/CHNAVPER//
SUBJ/BUPERS ORDER//
RNKS/

BUPERS ORDER: 3325 036-38-6363/1395 (PERS-432N)
OFFICIAL CHANGE DUTY ORDERS FOR
ENS [REDACTED] USNR

XX
IN CARRYING OUT/PROCESSING THESE ORDERS, BOTH PARTS ONE AND TWO
MUST BE READ AND LISTED INSTRUCTIONS COMPLIED WITH.

XX
PART ONE

----- DETACHING ACTIVITY (M) -----
WHEN DIRECTED BY REPORTING SENIOR, DETACH IN JAN 96 EDD: JAN 96
FROM STU TRAWING 2 KINGSVILLE TX UIC: 30777
PERMANENT DUTY STATION TX, KINGSVILLE
FROM DUTY UNDER INSTRUCTION IN A FLYING STATUS ACC: 342
INVOLVING FLYING
PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET KINGSVILLE UIC: 43096

----- ULTIMATE ACTIVITY (M) -----
REPORT NOT LATER THAN APR 96 EDA: APR 96
TO STU CRAW/CRAG VS 41 UIC: 65566
PERMANENT DUTY STATION CA, NORTH ISLAND
FOR DUTY UNDER INSTRUCTION IN A FLYING STATUS ACC: 342
INVOLVING FLYING BSC: 00210
PRD: 9611
PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET NORTH ISLAND CA UIC: 42827

----- ACCOUNTING DATA -----
MAC CIC: 3N3A60363863630
CIC: A53A629F
PCS ACCOUNTING DATA:
N3A6 1761453.2251 R 000022 A5 3A6/2/9/F 3A6036386363

PART TWO
BUPERS ORDER: 3325 036-38-6363/1395 (PERS-432N)
OFFICIAL CHANGE DUTY ORDERS FOR
ENS [REDACTED] USNR

----- DETACHING ACTIVITY (M) -----
DETACHING COMMAND AND PERSONNEL SUPPORT OFFICE DIRECTED TO ENSURE
MEMBER COMPLETES, WITHIN THREE DAYS PRIOR DETACHMENT, APPLICABLE
ITEMS ON BOTH SIDES OF TRAVEL INFORMATION FORM (NAVPER 7041/1) AND
SUBMIT TO DIRECTOR, PERMANENT CHANGE OF STATION, VARIANCE COMPONENT,
1240 EAST 9TH STREET, SUITE 907, CLEVELAND, OHIO 44199-2088.

COMMAND DELIVERING ORDERS AND ULTIMATE COMMAND: DIRECTED TO COMPLY
WITH MILPERSMAN 1810560 AND OPNAVINST 1740.3 REGARDING THE NAVY
SPONSOR PROGRAM.

MEMBER ADVISED: INFORMATION ON ULTIMATE DUTY STATION CAN BE
OBTAINED FROM YOUR LOCAL FAMILY SERVICE CENTER.

DETACHING COMMAND: DIRECTED TO ENSURE MEMBER MEETS, WITHIN TEN
(10) DAYS FROM RECEIPT OF THESE ORDERS, THE PHYSICAL READINESS
STANDARDS AS SET FORTH IN CNO MSG 291936Z APR 93 (NAVADMIN 071/93)
AND OPNAVINST 6110.1 (SERIES) UNLESS MEMBER IS BEING ORDERED TO
LIMITED OR HUMANITARIAN DUTY STATUS. IF MEMBER FAILS TO COMPLY WITH
PHYSICAL READINESS STANDARDS, IMMEDIATELY NOTIFY CHNAVPER (PERS-82
AND INFO PERS-4) BY MESSAGE. ENSURE RISK FACTOR SCREENING/PHYSICAL
READINESS TEST FORM IS FILED IN MEMBER'S SERVICE RECORD PRIOR TO
TRANSFER.

THE DO IT YOURSELF (DITY) HOUSEHOLD GOODS MOVE PROGRAM CAN MEAN
CASH INCENTIVES TO MEMBERS MOVING HOUSEHOLD GOODS WITHIN THE
CONTINENTAL U.S. ON PERMANENT CHANGE OF DUTY ORDERS. CONTACT YOUR
PERSONAL PROPERTY TRANSPORTATION OFFICE FOR INFORMATION.

TRANSFERRING COMMAND: IF TRANSOCEANIC TRAVEL WILL BE PERFORMED
BY MEMBER, PORT CALL ASSIGNED BY THE NAVY PASSENGER TRANSPORTATION

BUPERS WASH DC
ACTION PERS432(1)
INFO PERS4G2(1) TFK CK-USN(1)

(E,F)

3

MCN=95336/13770 TOR=95336/1147Z TAD=95336/1237Z

CDSN=MAB153
PAGE 1 OF 1
281219Z NOV 95
02 SECT MSG

UNCLASSIFIED

OFFICE WILL CANCEL THE REPORT NOT LATER THAN DATE, AT RECEIVING
COMMAND, AND SHALL CONSTITUTE THE SPECIFIC DATE MEMBER IS TO REPORT
FOR TRANSPORTATION. IF THIS IS AN ORDER MODIFICATION, CANCELLATION
OR MODIFICATION OF PORT CALL MAY BE REQUIRED. IF SO, IMMEDIATELY
CONTACT SERVICING NPTO. NAVMILPERSCOMINST 4650.2 SERIES REFERS.
COMMAND DELIVERING ORDERS: ENSURE MEMBER HAS-A COMPLETED AND
DOCUMENTED HIV TEST WITHIN TWELVE MONTHS OF EDD. EVERY EFFORT SHOULD
BE MADE TO ENSURE RESULTS ARE RECEIVED PRIOR TO TRANSFER. HOWEVER,
IF RESULTS ARE NOT RECEIVED, ENSURE MEMBER'S MEDICAL/DENTAL RECORD
REFLECTS THAT THE MEMBER'S TEST WAS COMPLETED AND AWAITING RESULTS.
TEST RESULTS SHOULD BE FORWARDED TO NEW DUTY STATION UPON RECEIPT FOR
INCORPORATION IN MEDICAL/DENTAL RECORDS.

----- ULTIMATE ACTIVITY (M) -----
COMMANDING OFFICER: ENSURE ALL LT'S THROUGH CAPT'S COMPLETE
OFFICER RETENTION QUESTIONNAIRES UNDER OPNAVINST 1040.8 SERIES
AS PART OF MEMBER'S CHECK-IN PROCEDURES.
FOR A LIST OF LOCATIONS OF NAVY TEMPORARY LODGES AND TYPES OF
FACILITIES AVAILABLE TO YOU IN THE AREA OF YOUR NEW DUTY STATION FOR
USE UNTIL PERMANENT HOUSING CAN BE OBTAINED, SEE SECNAVINST 11107.2
SERIES. FOR ADDITIONAL INFORMATION CALL THE NAVY LODGE RESERVATIONS
CENTER'S TOLL FREE NUMBER (1-800-NAVY-INN).
YOU ARE DIRECTED TO REPORT TO THE APPROPRIATE HOUSING REFERRAL
OFFICE PRIOR TO NEGOTIATING ANY AGREEMENT FOR OFF-BASE HOUSING.
(OPNAVINST 11101.13 AND OPNAVINST 11101.21 SERIES)

..... CONGRATULATIONS.....
..... WELCOME TO THE VIKING COMMUNITY AND THE VS-41 "SHAMROCKS".....

REPORT NLT 15 JAN 96
DESIGNATOR CHANGED TO 1315 EFFECTIVE UPON BEING DESIGNATED A
NAVAL AVIATOR.
MEMBER ADVISED: LOCATION IS A CRITICAL HOUSING AREA (CHA) WHERE
A SHORTAGE OF BOTH CIVILIAN AND MILITARY, INCLUDING BACHELOR, HOUSING
EXISTS AND DIFFERING VHA ENTITLEMENTS EXIST. YOU ARE ADVISED TO USE
HOUSE HUNTING TEMPORARY ADDITIONAL DUTY IF AUTHORIZED BY MILPERSMAN
6810400. STRONGLY RECOMMEND THAT DEPENDENTS NOT BE MOVED INTO THIS
AREA UNTIL SUITABLE HOUSING IS LOCATED. CALL YOUR LOCAL FAMILY
HOUSING OFFICE, OR REVIEW OPNAVINST 11101.43 AND CURRENT NAVADMIN
ON CHA'S TO CONFIRM ELIGIBILITY, AND SECNAVINST 7220.82 FOR
PROCEDURES TO REQUEST VHA AT DEPENDENT'S LOCATION.

----- SPECIAL INSTRUCTIONS -----
MEMBER DIRECTED: FOR INFORMATION REGARDING YOUR ULTIMATE DUTY
STATION CONTACT THE NEAREST DEPARTMENT OF DEFENSE FAMILY SERVICE
CENTER OR RELOCATION ASSISTANCE OFFICE.
COMPLY WITH MILPERSMAN 1810300 AND 1810320 REGARDING TRAVEL AND
AUTHORIZED PROCEED TIME IN EXECUTION OF THESE ORDERS.
PROVIDED NO EXCESS LEAVE INVOLVED, AUTHORIZED TO DELAY THIRTY DAYS
IN REPORTING TO COUNT AS LEAVE (MILPERSMAN 1810360). KEEP OLD AND
NEW DUTY STATION ADVISED OF LEAVE ADDRESS. FOR CIRCUITOUS TRAVEL
BT
UNCLAS //NO1321// FINAL SECTION OF 02
AND LEAVE VISITS TO FOREIGN COUNTRIES SEE NAVMILPERSCOMINST 4650.2
SERIES, ALSO SEE MILPERSMAN 3020520.
YOU ARE OBLIGATED TO SERVE EIGHT YEARS FOLLOWING COMPLETION OF
TRAINING DATE WITHIN THE NAVAL AVIATION TRAINING COMMAND.
(REFER MILPERSMAN 6610360).

(SIGNED)
[REDACTED]
VICE ADMIRAL, U. S. NAVY
CHIEF OF NAVAL PERSONNEL

PERS433 PERS432 BT



30-Apr-01

LEGAL COUNSEL (00L) TO
CHIEF OF NAVAL PERSONNEL

Subj: BCNR PETITION [REDACTED] USN

1. I concur with the advisory opinion provided by the Head of the Officer Personnel Plans and Policy Branch (N131) in his letter of 25 April 2001. The fact that [REDACTED] recruiter used an obsolete form that misled then [REDACTED] does not require a change of his service obligation to one that violates the obligation set out in 10 U.S.C. 653. In addition, the correct obligation was clearly set out in the BUPERS order [REDACTED] upon his completion of pilot training.

2. In reviewing the issue presented by [REDACTED] I researched Federal cases dealing with the question of the Government's responsibility for the unauthorized or incorrect statements of its agents. The law is still clear that the Government will not be bound by the mistakes of its agents or employees. See Office of Personnel Management [REDACTED] 414,434 (1990). In that case, a former Navy civilian employee who had been retired with a disability pension, checked with his former employee relations office about how much he would be permitted to earn before he would be required to forfeit his disability pay. The employee relations specialist informed him according to a version of the law that had been amended two years earlier. Relying on the principle that the Government is not bound by the errors of its employees, the Supreme Court upheld the termination of the former employee's disability retirement.

[REDACTED]