



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

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Docket No: 4537-21  
12004-08  
8317-89  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

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, sitting in executive session, considered your application on 22 June 2022. The names and votes of the panel members 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, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You enlisted and entered a period of active duty in the Navy on 14 April 1985 for a period of four years. On 12 January 1989, you executed an extension agreement for an additional 22 months. On 13 April 1989, you reenlisted for a period of six years, effective 14 April 1989. Your End of Active Obligated Service (EAOS) at the time of your reenlistment became 14 April 1995. During your first enlistment in the Navy from 17 April 1985 to 13 April 1989 you served honorably. On 26 April 1989, a Selective Reenlistment Bonus (SRB) Precertification message was published. In pertinent part, it indicated that in order for you to receive a Zone B entitlement, 50 months of additional obligated service beyond your original four year enlistment was required. In 1989, you petitioned this Board, requesting that your naval record be corrected so that you would be eligible for this entitlement in connection with your April 1989 reenlistment. On 5 December 1989, the Board granted your request and recommended:

“That Petitioner’s naval record be corrected, where appropriate, to show that the period of the extension agreement executed on 12 January 1989 and canceled by his April 1989 reenlistment is SIX MONTHS vice 22 MONTHS.”

The Board’s recommendation was executed by the Commander, Naval Military Personnel Command (NMPC) on 30 March 1990. The memorandum stated in pertinent part:

“...correct subject member’s record, where appropriate to show that the period of the extension agreement executed on 12 January 1989 and canceled by his April 1989 reenlistment is six months instead of 22 months.”

On 14 January 1993, you were issued a new military identification card due to it having been mutilated, with a “card expiration eligibility end date” of 13 April 1995. You entered a period of unauthorized absence from 13 January 1994 to 27 February 1994 for a total of 45 days. This UA was not excused and you were charged 45 days of lost time. On 13 April 1994, you executed a Summary Court Martial (SCM) acknowledgment of rights and waiver. You then entered a period of UA from 10 June 1994 to 5 February 1997 for a total of 971 days, terminated by apprehension. An administrative remark in your service record dated 13 February 1997 documented the 971 day UA and further indicated “retained onboard past original EAOS to make good lost time.” You were administratively separated in lieu of trial by court martial and discharged with an other than honorable characterization of service on 7 March 1997.

On 28 May 2009, this Board denied your previous application arguing that you were improperly held beyond your EAOS. This Board determined that your original obligated service date was properly extended due to time lost you incurred as a result of your unauthorized absences.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contention that BCNR changed your enlistment contract, that your EAOS was April 1993 because you had a 50 month obligated service contract from April 1989 to April 1993, that you served a year past your obligated service, and that your military identification card was mutilated and when replaced, was reissued with an incorrect date.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your initial extension agreement was modified at your request and to your benefit; the 50 month time requirement pertained to your receipt of an SRB and not your EAOS; and your EAOS based on your 6 year reenlistment contract was 14 April 1995 prior to the time you were charged for 1,016 days of lost time. Therefore, the Board found that you were still under contract to fulfill your service obligation at the time you entered a 45 day and 971 day periods of UA.

In its deliberations, the Board determined that your EAOS was 14 April 1995 based on the six year reenlistment contract you executed on 13 April 1989. Your contention that the Board changed your enlistment contract is accurate; however, this was done at your request so you could benefit from an

SRB which you would not have otherwise received. The Board disagreed with your contention that your obligation ended in April 1993 and found that the 50 month obligation period pertained to the time requirement for you to receive the SRB and was unrelated to your six year reenlistment obligation and EAOS. Furthermore, the NMPC record correction message executing the Board's decision to modify your 22 month extension agreement clearly stated that the extension agreement was canceled by your 13 April 1989 reenlistment contract. Accordingly, the Board decided that, as of 13 April 1989, your EAOS was, and remained, April 1995 and not April 1993 as you contend. Additionally, the Board noted that on 13 April 1994, you executed a SCM acknowledgment of rights and waiver document informing you of a pending SCM proceeding, presumably to adjudicate your 45 day UA. You elected to exercise your right to consult with counsel and objected to trial by SCM. Based on your election of rights, the Board concluded you were aware of pending charges and your continuing service obligation. Based on these factors, the Board found no error or injustice warranting a change to your EAOS. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon 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 this regard, 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,

7/6/2022

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Executive Director  
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