



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

[REDACTED]
Docket No: 7432-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USNR,
XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 w/attachments
(2) DD Form 4/1, Enlistment/Reenlistment Document, 30 July 1996
(3) DD Form 214 (19970612 – 20020611)
(4) Naval and Marine Corps Reserve Center, [REDACTED], CO Memo 1910 Ser N00/236, subj: [Petitioner]; Recommendation for Administrative Separation, 13 May 2003
(5) Navy Standard Integrated Personnel System IDT History Review, run date 30 March 2003
(6) NAVPERS 1070/613, Administrative Remarks, 28 February 2003
(7) NAVPERS 1910/32, Administrative Separation Processing Notification Procedure, 2 April 2003
(8) Sworn Affidavit of Service by Mail, 3 April 2003
(9) COMNAVPERSCOM Millington TN Msg, subj: Admin Disch ICO [Petitioner], dtg 121426Z June 03
(10) NAVPERS 1070/613, Administrative Remarks, 18 June 2003
(11) Naval Reserve Personnel Center Letter 1420 N511, 8 July 2003

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his characterization of service be upgraded; that his inter-service reenlistment eligibility code be changed from 09 to 1; that his inter-service separation code be changed from 065 to 0; that his reenlisted eligibility be changed from ZZ to 1; and that his separation program designator (SPD) code be changed from JKA to MCF.

2. The Board reviewed Petitioner's allegations of error or injustice on 22 December 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of

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Petitioner's naval service records, and applicable statutes, regulations, and policies, to include reference (b).

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and review Petitioner's application on its merits.

c. On 30 July 1996, Petitioner enlisted in the U.S. Navy Reserve (USNR) for a period of eight years. See enclosure (2).

d. On 12 June 1997, Petitioner entered into active duty service as part of the Training and Administration of the Reserves program. He remained on active duty until he was honorably discharged and returned to his reserve status upon the completion of his required active duty service on 11 June 2002. See enclosure (3).

e. On 1 September 2002, Petitioner reportedly checked into his USNR unit upon his discharge from active duty. See enclosure (4).

f. In December 2002, Petitioner had four unexcused absences from his USNR duty recorded in his record. See enclosure (5).

g. On 28 February 2003, a written counseling statement was inserted into Petitioner's record concerning his failure to pay his Government Travel Credit Card (GTCC) debt. Petitioner did not acknowledge this counseling statement. See enclosure (6).

h. In February 2003, Petitioner had four unexcused absences from his USNR duty recorded in his record. See enclosure (4).

i. In March 2003, Petitioner had four unexcused absences from his USNR duty recorded in his record. See enclosure (4).

j. On 2 April 2003, Petitioner's commander initiated administrative separation proceedings against Petitioner for misconduct by reason of a pattern of misconduct and unsatisfactory participation in the Ready Reserve. See enclosure (7). On 3 April 2003, the notification of the initiation of Petitioner's administrative separation proceedings was sent via certified mail to an address in Ohio. See enclosure (8). Petitioner never acknowledged receipt of this notification.

k. By memorandum dated 13 May 2003, Petitioner's commander recommended that Petitioner be discharged from the USNR by reason of misconduct due to a pattern of misconduct and for unsatisfactory participation in the Ready Reserve, and that his service be characterized as general (under honorable conditions). See enclosure (4).

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l. By message dated 12 Jun 2003, the separation authority directed that Petitioner be discharged from the USNR for misconduct due to a pattern of misconduct with a general (under honorable conditions) characterization of service under the authority of MILPERSMAN 1910-140.¹ This order did not mention separation by reason of unsatisfactory participation in the Ready Reserve or the authority for such a separation.² See enclosure (9).

m. On 18 June 2003, Petitioner was discharged from the USNR under honorable conditions with a general characterization of service. The reason stated in his record for this discharge was “unsatisfactory participation in the Ready Reserve”; the authority stated was MILPERSMAN 1910-146; his SPD code was JKA; and his reenlistment code was RE-4. See enclosure (10). Petitioner was transferred to the Individual Ready Reserve (IRR) due to his remaining military service obligation.

n. On 8 July 2003, the Naval Reserve Personnel Center sent a letter to Petitioner at the [REDACTED] address reflected as Petitioner’s home of record on his DD Form 214 to clarify his IRR status and availability. Petitioner responded by signature dated 21 July 2003 indicating no circumstances which would hinder his availability for mobilization in the IRR. See enclosure (11).

o. Petitioner contends that his retention in the Ready Reserves upon the completion of his active duty service was an administrative error, as he had requested and was approved to be placed in an inactive status in the IRR while attending college full time. He asserts that he never received any verbal or written notifications that he was noncompliant with his reserve obligations or that he had been discharged, and that he only recently discovered that he had an adverse reenlistment code. Petitioner states that wishes to join the [REDACTED], but is ineligible to do so because of his reenlistment code.

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that relief is warranted in the interests of justice.

The Majority found sufficient evidence to conclude that Petitioner’s separation from the USNR was the result of an administrative error assigning him to an active reserve status with monthly drill requirements, rather than to the IRR without monthly drilling requirements while he attended college full time, as was his understanding. It also found sufficient evidence to conclude that Petitioner never received notice of any alleged misconduct or delinquency in his reserve duty requirements, or that he was pending administrative separation for misconduct and unsatisfactory participation in the Ready Reserve. Specifically, the Majority noted that Petitioner never acknowledged the counseling statement at enclosure (6) or the notice of his administrative separation which was sent to an [REDACTED] address (7), but immediately responded to a letter clarifying his IRR status sent to his home of record in [REDACTED].

¹ MILPERSMAN 1910-140 was the authority for separation by reason of misconduct due to a pattern of misconduct.

² MILPERSMAN 1910-158.

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The Majority noted an error in Petitioner's naval record, in that the stated reason for his discharge is "Unsatisfactory Participation in the Ready Reserve" and his separation authority is stated as "MILPERSMAN 1910-146" (see enclosure (10)), while the separation authority had directed that Petitioner be separated for a "Pattern of Misconduct" under the authority of MILPERSMAN 1910-140 (see enclosure (9)). This error diminished the Majority's confidence that Petitioner's command properly handled Petitioner's situation, and contributed to the conclusion that his separation was the result of a misunderstanding.

The Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, the administrative error regarding Petitioner's status in the USNR and the misunderstandings that resulted from this error; that Petitioner did not receive actual notice of any alleged misconduct or the pending administrative separation proceedings against him; Petitioner's previous honorable service on active duty; and Petitioner's desire to continue serving in the National Guard. Based upon the totality of the circumstances, the Majority determined that Petitioner's characterization of service and inability to reenlist constitutes an injustice and that relief is warranted.

Although the Majority determined that relief is warranted, it found difficulty addressing all of Petitioner's specific requests for records corrections as some of his requests are not part of any U.S. Navy record system. Accordingly, the Majority clarifies that it is its intent that Petitioner's naval record should be corrected to remove any reference a less than fully honorable discharge and misconduct for which he was not afforded the opportunity to response, and to ensure that Petitioner is fully eligible for reenlistment.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That the NAVPERS 1070/613 (Administrative Remarks) page in Petitioner's naval record recording his administrative separation from the USNR be removed and replaced with a version reflecting that Petitioner's service was characterized as "Honorable"; that the reason for his separation was "Secretarial Authority"; that his separation authority was MILPERSMAN 1910-164; that his SPD code was "JFF"; and that his reenlistment code was "RE-1."

That all documents pertaining to Petitioner's administrative separation for misconduct and substandard participation in the Ready Reserve be removed from Petitioner's naval record.

That the unacknowledged counseling statement alleging failure to pay a debt related to Petitioner's GTCC account, dated 28 February 2003, be removed from Petitioner's naval record.

That any other entries in Petitioner's naval record which would prevent his reenlistment, provided that he is otherwise qualified, be corrected to remove such prohibition.

That a copy of this record of proceedings be filed in Petitioner's naval record.

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That no further corrective action should be taken.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority noted that Petitioner knowingly enlisted in the USNR for a period of eight years, and had served only five years when he was released from active duty. Accordingly, even if there was a misunderstanding regarding Petitioner's reserve status following his release from active duty, Petitioner knew that he had three years remaining on his obligation which was never fulfilled. Nearly 20 years have passed since Petitioner's release from active duty, yet he reportedly only recently discovered his ineligibility for reenlistment. Based upon these circumstances, the Minority believed that Petitioner failed to satisfactorily participate in the Ready Reserve, as his naval record reflects.

The Minority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). However, given its finding that Petitioner's participation in the USNR was unsatisfactory, the Minority determined that the totality of the circumstances did not warrant the relief recommended by the Majority.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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

2/3/2022

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Full Relief)

MINORITY Recommendation Approved (Deny Relief)

2/15/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]