



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

██████████
Docket No: 0052-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, ██████████,
USN, ██████████

Ref: (a) 10 U.S.C. § 1552
(b) MILPERSMAN 1160-030 (Ch-58), Enlistments and Reenlistments under Continuous Service Conditions, 28 March 2017
(c) MILPERSMAN 1450-010 (Ch-11), Reduction in Rate, 13 April 2005

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) NAVPERS 1626/7, Report and Disposition of Offense(s)
(4) SEAL Team ██████████ CO Memo 1616 Ser N00/109, subj: Non-Judicial Punishment Report ICO [Petitioner], 29 July 2020
(5) NAVPERS 1626/26, Evaluation Report & Counseling Record (E1-E6) (20191116 – 20200610)
(6) NAVPERS 1626/26, Evaluation Report & Counseling Record (E1-E6) (20200611 – 20210529)
(7) E-mail Message, subj: RE: [Non-DoD Source] Re: [Petitioner]..., Friday, July 23, 2021 @ 10:26:31 AM EST

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, hereinafter referred to as the Board, requesting that his record be corrected by changing his reentry code from RE-4 to RE-1.

2. The Board reviewed Petitioner's allegations of error or injustice on 31 January 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval service records, and applicable statutes, regulations, and policies.

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.

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b. Petitioner enlisted in the Navy and began a period of active duty service on 9 September 2010. See enclosure (2). His final enlistment commenced on 30 May 2017 with an expiration date of 29 May 2021. See enclosure (3).

c. On 10 June 2020, Petitioner received nonjudicial punishment (NJP) for failure to obey a lawful order to removal all ordnance from his personal bags in violation of Article 92, Uniform Code of Military Justice (UCMJ), and for wrongful appropriation of four M112 C4 explosive blocks, one fragmentation grenade, and two diversionary grenades belonging to the U.S. government, in violation of Article 121, UCMJ. His punishment consisted of reduction to pay grade E-5, and the forfeiture of \$1653.04 pay per month for two month.¹ See enclosure (3).

d. By memorandum dated 29 July 2020, Petitioner's commander forwarded a report of misconduct regarding Petitioner's NJP for inclusion in his official record. Petitioner's commander stated that he had removed Petitioner's Navy Enlisted Classification as a SEAL, but specifically did not request Petitioner's detachment for cause. Instead, his commander stated that Petitioner would be required to choose another rating outside the Naval Special Warfare community. See enclosure (4).

e. On 10 June 2020, Petitioner's Reporting Senior (RS) issued Petitioner a special evaluation report for the reporting period 16 November 2019 to 10 June 2020. This evaluation report was adverse, in that it assigned Petitioner a rating of "1" ("Below Standards") in Block 36 ("Military Bearing/Character"). The explanation for this adverse rating in Block 43 was the NJP discussed in paragraph 3c above. Petitioner was also assigned a rating of "2" ("Progressing") in Block 39 ("Leadership"). Despite the adverse nature of this evaluation report and Petitioner's misconduct, the RS recommended Petitioner's retention in Block 47. On 2 October 2020, Petitioner acknowledged this adverse evaluation report, and elected not to submit a statement. See enclosure (5).

f. On 29 May 2021, Petitioner's RS issued Petitioner a final evaluation report upon his separation from the naval service for the reporting period 11 June 2020 to 29 May 2021.² This evaluation was not adverse, but it assigned Petitioner ratings of "2" in Blocks 36 and 39. Petitioner was again recommended for retention in Block 47. See enclosure (6).

g. On 29 May 2021, Petitioner was honorably discharged from the Navy upon the completion of his required active service. His DD Form 214 was issued on 7 June 2021, reflecting a reentry code of "RE-4" and that Petitioner's signature was "unattainable." See enclosure (2).

h. By e-mail dated 23 July 2021, the Deputy Staff Judge Advocate, Naval Special Warfare Group [REDACTED], expressed surprised when questioned about Petitioner's reentry code. He stated that the command was not involved in the assignment of this reentry code. See enclosure (7).

¹ The adjudged forfeiture of pay was suspended for six months.

² The RS for this evaluation report was different than the one who issued the previous special evaluation report.

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i. Petitioner contends that there was no basis for his RE-4 reentry code, as he voluntarily declined to reenlist for family reasons and he was honorably discharged upon completion of his service obligation.

j. Paragraph 9 of reference (b) establishes the criteria for assignment of an RE-4 reentry code. Specifically, it provides the following qualifying criteria for assignment of this disqualifying reentry code:

(1) Have had one general or special court-martial conviction, two summary court-martial convictions, or a combination of more than two non-judicial punishments or summary court-martial convictions in the year preceding [expiration of obligated service] or desired reenlistment date;

(2) [Reserve Component] personnel who fail to fully comply with initial active duty record orders;

(3) Have been administratively reduced in rate, detached for cause, or issued a letter of substandard service;³ or

(4) Not recommended for reenlistment by the [commanding officer].

Reference (b) also provides the following criteria for assignment of an RE-4 reentry code for individuals in the pay grade of E-5 and above (like Petitioner):

(1) Received two or more marks of 2.0 or below in same trait on enlisted performance evaluations during past 36 month (unless specifically assigned due to physical fitness assessment failures);

(2) Received any mark of 1.0 or below (in any trait) within 1 year prior to [expiration of obligated service] or reenlistment request; or

(3) Less than 2.5 average in any trait during current enlistment.

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority found that Petitioner's reentry code was assigned in error.

The Majority found it to be apparent from the evidence that Petitioner's command never intended to preclude his further service in the Navy following completion of his NJP. His commander specifically recommended that Petitioner be permitted to continue serving in the Navy in a different rating, and Petitioner was recommended for retention in each of his final two evaluation reports. Further, Petitioner's reentry code was inconsistent with the characterization

³ Reference (c) distinguishes an "administrative" reduction in rate by reason of incompetency from a punitive reduction in rate pursuant to Article 15, UCMJ.

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of his service and the reason for his discharge. The Majority believed that this error was exacerbated by the fact that the Navy did not afford Petitioner the opportunity to sign his DD Form 214, as enclosure (7) suggested that he was available to do so, as this error likely would have been resolved if Petitioner had been afforded this opportunity. Having found no basis to prohibit Petitioner's ability to reenlist in the armed forces, the Majority determined that his reentry code should be changed to "RE-1."

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:

That Petitioner be issued a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) reflecting that his reentry code was "RE-1."

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

That no further corrective action be taken.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found no error or injustice in Petitioner's naval record warranting relief.

Unlike the Majority, the Minority found no error in the assignment of Petitioner's reentry code. Although it agreed that the evidence reflected that Petitioner's command recommended Petitioner's retention, the command's recommendation is but one criteria upon which an RE-4 reentry code could be based. The Minority found that Petitioner clearly met the criteria in reference (b) for assignment of a RE-4 reentry code for an individual in pay grade E-5. Specifically, he received two marks of 2.0 or below for two different traits (i.e., Military Bearing/Character and Leadership) on his performance evaluations during the final 36 months of his enlistment. He also received a mark of 1.0 for the Military Bearing/Character trait within one year of his expiration of obligated service. As such, Petitioner's reentry code was properly assigned in accordance with reference (b). Additionally, the Minority believed that Petitioner's misconduct was particularly egregious, and that the assignment of the RE-4 reentry code prohibiting Petitioner's reenlistment was therefore in the best interests of the Navy and the armed forces. Accordingly, the Minority found no error or injustice in Petitioner's reentry code.

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.

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

2/22/2022

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approve (Grant Relief – Change reentry code to RE-1)

MINORITY Recommendation Approved (Deny Relief)

3/25/2022

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]