



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

[REDACTED]
Docket No. 330-22
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MILPERSMAN 1001-100 of 12 Oct 15
(c) BUPERSINST 1001.39F of 17 Sep 07
(d) 10 U.S.C. § 14505
(e) 10 U.S.C. § 12646

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion by NPC (PERS-9) of 7 Mar 21
(3) Subject's naval record

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 naval record be corrected to show Petitioner earned credit for lost drill points for two satisfactory years to be eligible for sanctuary.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 March 2022 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, relevant portions of Petitioner's naval record, and applicable statutes, regulations and policies, to include the advisory opinion (AO) at enclosure (2).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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. On 23 April 2003 Petitioner enlisted for 8 years in the Naval Reserve.

c. On 11 March 2008 Petitioner signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the inactive Navy Reserve as an Ensign with a permanent grade date/present grade date of 11 February 2008 and a designator code of 1635.

d. On 1 March 2012 Petitioner was advanced to Lieutenant/O-3.

e. On 4 August 2017 the Bureau of Naval Personnel notified Petitioner that a review of his record revealed he failed selection for promotion at least twice and completed eight years of military service, therefore, Petitioner was subject to be transferred to the retired reserve, if eligible, or be honorably

discharged, in accordance with 10 U.S.C., Chapter 1407¹. Accordingly, unless Petitioner was authorized continuation, his separation from the Navy Reserve will be not later than 1 February 2018.

f. On 1 February 2018 Commander, Navy Personnel Command (NPC) notified Petitioner that he was honorably discharged from the Navy Reserve, effective 1 February 2018.

g. On 4 December 2019 this Board directed NPC to convene a special board to consider Petitioner's request for continuation in the Naval Reserve to allow for a third promotion consideration to Lieutenant Commander (LCDR).

h. On 14 April 2020 Commander, NPC notified Petitioner that NNPC is directed to convene a special board to consider Petitioner's request for continuation in the Naval Reserve to allow for a third promotion consideration to LCDR.

i. On 9 June 2020 NPC notified Petitioner that he was authorized continuation in an active status of the Navy Reserve until 1 January 2022. This continuation does not alter any other provisions of law or policy to which he may become subject. Should Petitioner be selected for promotion during this continuation period, he will be allowed to continue his Navy career. If Petitioner does not select for promotion to LCDR before 1 January 2022, he must separate from the Navy Reserve on said date.

j. On 8 December 2020 Petitioner signed a Regular Evaluation Report and Counseling Record for the period of 1 June 2020 to 11 December 2020. This was a Detachment of Individual report and he received an Early Promote recommendation and was recommended for retention.

k. On 11 December 2020 Petitioner was mobilized and was honorably released from active duty and transferred to the Navy Reserve upon completion of required active service on 6 December 2021.

l. On 14 December 2021 NPC notified Petitioner that a panel of officers considered his request for continuation in the Navy Reserve. Regrettably, he was not recommended for continuation in an active status and his separation was now required. Because Petitioner had not earned 20 years of qualifying service, he was not eligible for transfer to the retired reserve, therefore, must be processed with an honorable discharge with an effective date of 1 April 2022.

m. On 31 January 2022 NPC issued a Statement of Service for Navy Reserve Retirement that listed unsatisfactory years ending 22 April 2019 and 22 April 2020, however, he was credited with 15 membership points for each year.

n. The AO attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that there is no evidence of missing points from Petitioner's participation record for the mobilization period of 23 April 2018 to 22 April 2020. Drill participation is posted based on the date of completion and cannot be backdated. PERS-912 could not find any evidence of any performed or missing participation point from his record.

¹ 10 U.S.C., Chapter 1407 also allows for continuation of certain Navy Reserve officers. Per FY-17/18 Navy Reserve Officer Retention and Continuation Plan, the Secretary of the Navy has determined that the need for continuation applies to all twice failed of select lieutenants. Because Petitioner meets this criterion, he may request continuation by completing the appropriate section of resolution of status form and return it to PERS-911 in the envelope provided or via email by 15 December 2017. If Petitioner did not request continuation by 15 December 2017, or if he is not approved for continuation, 10 U.S.C., Chapter 1407 mandates Petitioner be processed with an honorable discharge with an effective date of 1 February 2018.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of references (b) through (e)², the Board agreed with the AO that Petitioner had no drill participation points for the period in question, however, Petitioner was discharged at the time, awaiting his request for continuation to be adjudicated by this Board. When BCNR approved Petitioner's request and Petitioner was reinstated, Petitioner was only credited with membership points for the anniversary years ending 22 April 2019 and 22 April 2020. The Board concluded that based on the fact that Petitioner never failed to earn a qualifying year, he would have earned qualifying years for the years he lost before he was reinstated. Furthermore, the Board concluded that Petitioner would have completed 18 years of qualifying service at the end of anniversary year ending 22 April 2021, therefore, Petitioner would be eligible to be put into sanctuary vice discharge on 1 April 2022.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

Petitioner earned a satisfactory year after completing all training and administrative requirements to include 50 points for the anniversary year ending 22 April 2019. Note: To accomplish this, 35 non-paid drill points will be credited.

Petitioner earned a satisfactory year after completing all training and administrative requirements to include 50 points for the anniversary year ending 22 April 2020. Note: To accomplish this, 35 non-paid drill points will be credited.

Petitioner was subject to attrition actions at a time when he had accumulated between 18 and 20 years of qualifying service, NAVPERSCOM notified Petitioner and offered an extension in an active status, allowing him the opportunity to complete 20 years of qualifying service.

² In accordance with reference (b), as a general rule, if members become subject to any of the foregoing attrition actions at a time when they have accumulated between 18 and 20 years of qualifying service, NAVPERSCOM (PERS-911 and or PERS-913) will notify the members and offer an extension in an active status, allowing them the opportunity to complete 20 years of qualifying service.

In accordance with reference (c), the date used to determine the anniversary year is established by the date the member entered into active service or into active status in a Reserve component, whichever is earlier. Members with previously established anniversary dates will retain that date as the beginning of their anniversary year. Members are responsible for ensuring that they accrue at least 50 points each anniversary year to obtain a qualifying year toward retirement. A member's anniversary year most likely does not coincide with fiscal or calendar years.

In accordance with reference (d), unless retained as provided in section 12646 or 12686 of this title, a captain on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade and who has not been selected for continuation on the reserve active-status list under section 14701 of this title, shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

In accordance with reference (e), if on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, or 1409 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates: (1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or (2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

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

A copy of this Report of Proceedings will be filed in 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-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

3/31/2022

[REDACTED]

Deputy Director

[REDACTED]