



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

[REDACTED]
Docket No. 1257-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) Title 10 U.S.C. §6959
(c) OPNAVINST 1420.1

Encl: (1) DD Form 149 w/attachments
(2) USNA Transcript, 19 Jul 91
(3) Statement of Service, 21 Sep 01
(4) Statement of Service, 25 Aug 11
(5) USNA ltr, 2 Aug 21
(6) NAVPERS 1000/4, 8 May 91
(7) NAVPERS 1420/3, 29 May 91
(8) History of Assignment of 31 Aug 01
(9) Presidential Appointment Certificate, 18 Mar 91
(10) BUPERS Order: 0321, 1 Feb 01
(11) DD Form 214, 31 Aug 01
(12) NAVPERS 1000/4, 1 Sep 01
(13) NPC ltr 1820 PERS-912E/ha, 21 Sep 11
(14) NPC ltr 1820 PERS-912E/jed, 20 Jan 12
(15) Advisory Opinion by NPC ltr 5730 PERS-91, undated

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 reflect date commissioned as 29 May 1991 vice 8 May 1991 on his Certificate of Release or Discharge from Active Duty (DD Form 214); enclosure (11).

2. The Board, reviewed Petitioner's allegations of error and injustice on 19 July 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 enclosures (1) through (14), relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies. Board also considered the advisory opinion, enclosure (15), which was previously provided to Petitioner. Petitioner was afforded an opportunity to submit a rebuttal, but did not do so.

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3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

- a. On [REDACTED] Petitioner entered the United States Naval Academy (USNA). See enclosures (2) through (5).
- b. On [REDACTED] Petitioner signed NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office with a permanent grade date of 29 May 1991. See enclosure (6).
- c. On [REDACTED] Petitioner graduated from the USNA, was appointed an Ensign in the United States Navy, and entered active duty. See enclosures (2), and (5) through (9).
- d. On [REDACTED] Petitioner issued BUPERS Order: 0321 (Official Separation Orders). See enclosure (10).
- e. On [REDACTED] 2001 Petitioner resigned his commission. See enclosure (11).
- f. On [REDACTED] Petitioner signed NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office and was commissioned in the Navy Reserve. See enclosure (12).
- g. On [REDACTED], Petitioner earned 20 total years of qualifying service (TYQS) for non-regular retirement and issued Notification of Eligibility to Receive Retired Pay at Age 60 on 21 September 2011. See enclosures (4) and (13).
- h. On [REDACTED], Petitioner transferred to the Retired Reserve without pay. See enclosure (14).
- i. Navy Personnel Command (PERS-9) provided an unfavorable advisory opinion to enclosure (1). PERS-9 recommended disapproval of relief based on Petitioner's Oath of Office is signed and dated 8 May 1991 and Petitioner's DD Form 214 reflects an active start date of 8 May 1991 in block 12a which also bears his signature. See enclosure (15).

BOARD CONCLUSION

Upon review and consideration of all the evidence of record, and despite the contents of enclosure (15), the Board concluded Petitioner's request warrants full relief. In this regard, the Board determined Midshipmen cannot be commissioned onto active duty until graduated from the USNA in accordance with references (b)¹ and (c)². The Board surmised Petitioner was

¹ Reference (b), upon graduation from the Naval Academy the Midshipmen will accept an appointment, if tendered, as a commissioned officer of the Regular Navy and will serve on active duty for at least five years immediately after such appointment.

² Reference (c) specifies that Naval Academy graduates, upon appointment, are required to serve on active duty for a minimum of five years active and three years Reserve.

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[REDACTED]

instructed to sign his Oath before graduation to ensure administrative matters were completed. However, Petitioner did not graduate from USNA until [REDACTED] as confirmed by enclosures (2) and (5). Therefore, the Board felt, under these circumstances, relief is warranted.

BOARD RECOMMENDATION

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

Petitioner signed, enclosure (6), initial NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office on [REDACTED] vice [REDACTED]. Note: Subsequent to updating Petitioner's statements of service, Navy Personnel Command (PERS-9) is authorized to redistribute earned points from one anniversary to another to ensure 20 TYQS is maintained.

Petitioner issued DD Form 215, Correction to DD Form 214 of 31 August 2001 by changing block 12a (Date Entered AD this Period) to [REDACTED] vice [REDACTED] and block 12c (Net Active Service this Period) 10 years, 03 months, 03 days vice 10 years, 03 months, 24 days.

Note: As a result of this change, Petitioner may be issued a debt. The Board will not grant a waiver of the debt, however, Petitioner may submit DD Form 2789, Waiver/Remission of Indebtedness Application to Defense Finance and Accounting Service (DFAS) for consideration.

Note: DFAS will complete an audit of Petitioner's pay records to determine appropriate basic pay and allowances as a Midshipmen vice an Ensign from [REDACTED] to [REDACTED].

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

8/3/2022

[REDACTED]

Executive Director

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[REDACTED]

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Recommendation (Grant Relief) X

Reviewed and Approved Advisory Opinion (Deny Relief)

[REDACTED]

Assistant General Counsel (M&RA)