



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

█
Docket No. 2809-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █ RET,
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Ref: (a) Title 10 U.S.C. § 1552
(b) Public law 102-484 § 1143a of 23 Oct 92
(c) DoDI 1340.19 of 17 Nov 93
(d) DoD 7000.14-R FMR Volume 7B Chapter 1
(e) Operation Transition PACS Employer Database Feb 09

Encl: (1) DD Form 149 w/attachments
(2) DD Form 4 eff 18 May 81
(3) NAVCRUIT 1000/20 of 10 Jun 88
(4) NAVCRUIT 1000/20 of 7 May 93
(5) DD Form 2648 of 23 Jul 99
(6) NPC memo 1811 PERS-822 of 10 Sep 99
(7) DD Form 214 eff 31 Oct 99
(8) █ home page screenshot
(9) Member Data Summary
(10) OCNO memo 7220 Ser N130/22U897 of 9 Jun 22

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 receive service credit from Public and Community Service (PACS) Program.

2. The Board, reviewed Petitioner's allegations of error and injustice on 16 June 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 (9), relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies, to include references (b) through (e). The Board also considered, enclosure (10), an advisory opinion (AO) furnished by the Office of the Chief of Naval Operations.

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.

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[REDACTED]

b. On 18 May 1981, Petitioner enlisted into the Naval Reserve Delayed Entry/Enlistment Program. On 2 September 1981, Petitioner entered active duty for 4 years in the U.S. Navy. See enclosure (2).

c. On 10 June 1988, Petitioner signed an Officer Appointment Acceptance and Oath of Office (NAVCRUIT 1000/20) in the active U.S. Navy as an Ensign with a 10 June 1988 date of rank and designator code of 1160 (Unrestricted line officer billet for an officer in training for surface warfare qualification). See enclosure (3).

d. On 7 May 1993, Petitioner signed an Officer Appointment Acceptance and Oath of Office (NAVCRUIT 1000/20) in the inactive U.S. Naval Reserve as a Lieutenant with a 1 July 1992 date of rank and designator code of 3105 (A Supply Corps Officer). See enclosure (4).

e. On 23 July 1999, Petitioner signed a Pre-separation Counseling Checklist (DD Form 2648) acknowledging he was counseled on PACS. Transition counselor certified on 28 October 1999. See enclosure (5).

f. On 10 September 1999, Officer Retirements Branch notified Chief of Naval Personnel and recommended the request for voluntary retirement be approved. Petitioner is listed as eligible for retirement under SECNAVINST 1811.3M. See enclosure (6).

g. Petitioner was honorably discharged and was issued a DD Form 214 for the period of 1 July 1996 to 31 October 1999 upon transfer to the retired list due to early retirement¹ with 15 years, 7 months, and 9 days. See enclosure (7).

h. On 24 July 2000, Petitioner was hired by [REDACTED] School District² as a Reserve Officers' Training Corps (ROTC) Teacher, and is still currently employed. See enclosure (8).

i. On 18 May 2022, Petitioner turned age 62. See enclosure (9).

j. As part of the Board's review, the Office of the Chief of Naval Operations reviewed Petitioner's request and provided the Board with an AO. The AO stated in pertinent part:

"[REDACTED] requests his retirement pay be recalculated at age 62 under Section 4464 of the National Defense Authorization Act for Fiscal Year (1993) (FY93 NDAA).

[REDACTED] provided a DD-214 that shows greater than 15 years of service and retired under section 4403 FY93 NDAA. [REDACTED] states he under section 4464 he qualifies for postretirement recalculation and provided documentation of his badge with date of hire. [REDACTED] also claims he submitted DD Form 2676, "Validation of Public or Community

¹ Reference (d), under Temporary Early Retirement Authority (TERA), the Secretary of the Military Department concerned may reduce the 20 years of creditable service requirement to as few as 15 years for retirements during 23 October 1992 through 1 September 2002, for Regular and non-Regular retirements.

² Reference (e), Operation Transition PACS Employer Database, last updated in February 2009. [REDACTED] School District is not listed.

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Service Employment” but that Defense Finance and Account Service (DFAS) does not have record of it.”

The AO concluded, OPNAV N130 recommends that [REDACTED] be authorized to resubmit DD Form 2656 under the public and community service program for TERA retirees. However, OPNAV N130 defers to DFAS to ensure member meets the program requirements for public and community service once he resubmits application, and if he does, recalculate his retirement pay at age 62.” See enclosure (10).

k. Petitioner contends he retired under the TERA retirement authority and started a job as an NJROTC Instructor at [REDACTED] High School on 24 July 2000, and is still working there. He requests that his military retirement be adjusted when he turns 62 in May 2022. He further contends that DFAS said they do not have his Public and Community Service application from 22 years ago, and he cannot find a copy. Lastly, he contends that he retired, and in good faith took a Public and Community Service job when it became available. See enclosure (1).

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of enclosure (10) and reference (c)³, the Board Majority concluded Petitioner’s request warrants favorable corrective action. In this regard, the Majority noted Petitioner did not provide evidence of aforementioned DD Form 2676 and signed a pre-separation counseling checklist acknowledging he was counseled on PACS on 23 July 1999. However, the transition counselor did not certify the counseling until 28 October 1999, thus, the Majority believed that the military service could have failed to explain the reporting requirements and procedures for the enhanced retirement credit. Furthermore, Petitioner has been employed as an ROTC teacher since 24 July 2000, therefore, the Majority felt, under these circumstances, relief is warranted.

³ Reference (c), this Instruction establishes policy, assigns responsibilities, and prescribes procedures to certify the public and community service employment of eligible retired members under Section 4464 of reference (a). Such certified employment may be used to re-compute military retired pay and, where applicable, the Survivor Benefit Plan (SBP) base amount when the retired member attains or would have attained 62 years of age. This Instruction applies to any member of the Military Services who Retires (other than for disability) under the temporary early retirement authority before the completion of 20 years of creditable service (as computed under the applicable provision of law) (herein referred to as "retiree"). Is employed by a public or community service organization listed on the registry required by Section 1143a(c) of 10 U.S.C. Is employed within the period beginning on the date of retirement and ending on the date the retired member would have attained 20 years of creditable service for computing retired pay (herein referred to as "enhanced retirement qualification period").

During retirement processing, the Military Services shall provide each retiree a copy of DD Form 2676, "Validation of Public or Community Service Employment," and explain the reporting requirements and procedures for enhanced retirement credit as described in this Instruction. A retiree who becomes employed under the conditions specified in shall obtain certification of employment from the employing organization and submit a completed DD Form 2676 as follows: At the beginning of a qualifying period of employment, unless the expected period of employment is less than 3 months. At the end of a qualifying period of employment or the end of the enhanced retirement qualification period, whichever comes first. Annually during a qualifying period of employment on the anniversary of the date of retirement, unless this date is within 3 months of either of the dates defined by subparagraphs 5.3.1.1. and 5.3.1.2.

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MAJORITY RECOMMENDATION

In view of the foregoing, the Majority recommends the following corrective action be taken: Petitioner, prior to early retirement, registered for PACS.

Petitioner became employed under the conditions specified in reference (c), subsection 3.1 and obtained certification of employment from the employing organization, and submitted a completed DD Form 2676 as follows; at the beginning of his qualifying periods of employment, at the end of his qualifying periods of employment, or the end of the enhanced retirement qualification period (whichever came first), and annually during a qualifying period of employment on the anniversary of the date of retirement.

Note: Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner's records to determine years credited from 24 July 2000 until Petitioner would have reached 20 years of service, and re-compute military retired pay and the SBP base amount.

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

MINORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Minority concluded that reference (c) clearly outlined the requirements and procedures for the registration of PACS and Petitioner provided no evidence of appropriate action taken to register. Additionally, enclosure (5) indicates Petitioner received pre-separation counseling on PACS, therefore, the Minority felt, under these circumstances, relief is not warranted.

MINORITY RECOMMENDATION

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

That a copy of this record of proceedings 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. I am acting on behalf of the Executive Director subject to her recusal from the post-board approval of the Board's findings due to her participation on the Board and her express delegation. As such, the foregoing action of the Board is submitted for your review and action based on special delegation by the Executive Director.

6/30/2022

[REDACTED]

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[REDACTED]

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Majority Recommendation (Grant Relief)

Reviewed and Approved Board Minority Recommendation (Deny Relief)

7/22/2022

[REDACTED]