



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

█
Docket No: 5260-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
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Ref: (a) Title 10 U.S.C. § 1552
(b) Title 10 U.S.C. § 12322
(c) Title 10 U.S.C. § 12301(h)

Encl: (1) DD Form 149 w/attachments
(2) MARFORRES ltr 1320 MROWS/2167337/0/MED of 2 Oct 17
(3) MARFORRES ltr 1320 MROWS/2197926/0/MED of 14 Feb 18
(4) MARFORRES ltr 1320 MROWS/2269995/0/MED of 6 Aug 18
(5) HQMC memo 1326 RAP of 27 Sep 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to modify Medical Hold orders dated 2 October 2017, and Permanent Change of Station (PCS) orders dated 14 February 2018, and 6 August 2018 to reflect that he was ordered to active duty according to Title 10 U.S.C. Section 12301(h) instead of Title 10 U.S.C. Section 12322.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 15 November 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 records, and applicable statutes, regulations, and policies.

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 2 October 2017, Petitioner was issued active duty Medical Hold orders for the period 1 October 2017 to 14 February 2018. Enclosure (2).

c. On 14 February 2018, Petitioner was issued active duty PCS orders for the period

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15 February 2018 to 15 August 2018. Paragraph 3 of the PCS orders indicates that Petitioner was ordered to active duty in accordance with reference (b). Enclosure (3).

d. On 6 August 2018, Petitioner was issued active duty PCS orders for the period 5 August 2018 to 15 February 2019. Paragraph 3 of the PCS orders indicates that Petitioner was ordered to active duty in accordance with reference (b). Enclosure (4).

e. In his application, Petitioner contends that his orders were incorrectly coded according to Department of Defense and Marine Corps policy at the time. Petitioner noted that during 2014 Congress was urged to change the policy in the Fiscal Year (FY) 2016 National Defense Authorization Act. Specifically, that active duty orders under reference (c) be used for those reserve component (RC) Marines injured or wounded in the line of duty while supporting contingency operations, and the law was eventually changed to include Post 9/11 education benefits eligibility for orders issued according to reference (c). Marines issued orders issued under reference (b) were never eligible for Post 9/11 MGIB education benefits, because those orders were for RC Marines injured during Inactive Duty Training or while on orders lasting 30 days or less. In his case, his orders indicated reference (b), which was inappropriate under the law.

f. In an advisory opinion (AO) provided by the Marine Corps Reserve Administration Policy Branch (RAP), the AO concurred with Petitioner's request. The AO noted that Petitioner served on voluntary active duty from 3 August 2015 to 30 September 2017, he was injured and subsequently placed on medical hold from 1 October 2017 to 29 June 2019. The AO also noted that reference (c) states, "when authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty – (A) to receive authorized medical care; (B) to be medically evaluated for disability or other purposes; or (C) to complete a required DoD health care study . . ." In this case, Petitioner served on active duty to receive medical treatment from 1 October 2017 to 29 June 2019, spanning three sets of medical hold orders. The AO explained that the entire period of medical hold is reported in the Veterans Affairs (VA) data system as a period of active duty ordered under reference (c). Due to the length of active duty prior to being placed on medical hold, Petitioner was not eligible to be ordered to active duty for medical treatment under reference (b), but was instead eligible under reference (c). The AO determined that in accordance with statute, it is recommended that Petitioner's orders be corrected to reflect an order to active duty under reference (c), and to subsequently report the modifications to the VA. Enclosure (5).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting corrective action.

The Board substantially concurred with the AO that the modification to Petitioner's orders is warranted. The Board noted that Petitioner's orders were issued according to reference (b), instead of reference (c), which negatively affected his Post 9/11 MGIB education eligibility benefits. The Board also noted the AO's recommendation to report the modifications to the VA

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and determined that the VA should be notified, however, any coordination with the VA should be conducted by Reserve Affairs or Petitioner.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by modifying enclosures (2) through (4), Petitioner's active duty orders dated 2 October 2017, 14 February 2018, and 6 August 2018 by removing any reference to reference (b) and including a statement to indicate that his orders were issued according to reference (c).

Any material or entries relating to the Board's recommendation be corrected.

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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/28/2022

[REDACTED]