

Subj: REVIEW OF NAVAL RECORD ICO FORMER MEMBER [REDACTED], USNR,
[REDACTED]

access to classified information and/or assignment to duties that have been designated national security sensitive. Petitioner's Response(s) to statement of reasons and any related comments sufficiently explained, mitigated, or provided extenuating circumstances regarding the disqualifying information listed in [reference (a)]. Accordingly, Petitioner has been determined eligible for access to classified information and/or assignment to duties that have been designated national security sensitive. Although a favorable determination has been made, Petitioner has been strongly cautioned that receipt of any derogatory information, especially of a nature similar to that mentioned in [reference (a)] will be cause for immediate reconsideration.

e. On 1 December 2021 Petitioner completed 19 qualifying years of service, and after 20 March 2021 and before 27 March 2022, Petitioner completed no drills.

f. On 21 March 2022 PGP Polygraph & Interviewing Service notified Commander [REDACTED], Navy Judge Advocate General's Corps, Defense Counsel that on March 21, 2022, PGP Polygraph was asked to administer a court qualified polygraph examination of Petitioner. The purpose of this examination was to determine if Petitioner was being truthful when he stated that he did not intentionally mislead the U.S. Navy regarding his prior arrests and did not intentionally fail to report any arrest to the U.S. Navy. This was based on information presented in the Naval Criminal Investigative Service (NCIS) investigation reports dated March 29, 2021 and April 20, 2021; the ADSEP processing notice; and numerous police reports regarding allegations made. Petitioner stated that the decision to participate in a polygraph examination was decided by him and his attorney to engage in a scientific technique to aid in confirming or not the aforementioned statements.

“Relevant Questions: Regarding your reporting of your arrests to the navy, do you plan to answer these questions truthfully? Answer: Yes
Did you intentionally fail to report any arrest to the Navy? Answer: No
Did you intentionally mislead the Navy regarding any of your arrests? Answer: No
Did you intentionally obstruct the Navy's investigations related to your arrests? Answer: No”

The quality control evaluation and the numerical scoring support a finding of No Deception Indicated to the above relevant questions. It is the opinion of this examiner that Petitioner was being truthful when he answered the above relevant questions. The Examiner's Professional opinion: Petitioner's answers to the relevant test questions are considered to be RELIABLE. This opinion was determined by the information provided by the investigative information and the examiner's discussion with Petitioner.

g. On 23 March 2022 PGP Polygraph & Interviewing Service notified Commander [REDACTED], Navy Judge Advocate General's Corps, Defense Counsel that on March 23, 2022, PGP Polygraph was asked to administer a court qualified polygraph examination of Petitioner. The purpose of this examination was to determine if Mr [REDACTED] was being truthful when he stated that he did not commit any of the crimes listed as follows: stalking,, physical assault, and communication of threats against any of ME, HS, or AT. This was based on information presented in the NCIS investigation reports dated March 29, 2021 and April 20, 2021; the ADSEP processing notice; and numerous police reports regarding allegations made by [REDACTED], and [REDACTED]. Mr. [REDACTED] stated that the decision to participate in a polygraph examination was decided by him and his attorney, Commander [REDACTED] to engage in a scientific technique to aid in confirming or not the aforementioned statements.

“Relevant Questions: Regarding whether or not you committed any of the crimes on that sheet of paper against [REDACTED] or [REDACTED], do you intend to answer each question truthfully? Answer: Yes. Did you commit any of the crimes on that sheet of paper against any of those women? Answer: No. Did you do any of the crimes listed on that sheet against any of those

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women? Answer: No. Did you ever commit any of the crimes against those women listed on that sheet of paper? Answer: No”.

The quality control evaluation and the numerical scoring support a finding of No Deception Indicated to the above relevant questions. It is the opinion of this examiner that Mr. ██████████ was being truthful when he answered the above relevant questions. The Examiner’s Professional opinion: the examinee’s answers to the relevant test questions are considered to be RELIABLE. This opinion was determined by the information provided by the investigative information and the examiner’s discussion with Mr. ██████████.

h. On 27 March 2022 Petitioner appeared with counsel at an ADSEP Board for MILPERSMAN 1910-130, "Separation By Reason of Defective Enlistments and Inductions- Erroneous Enlistment," MILPERSMAN 1910-134 "Defective Enlistments and Inductions- Fraudulent Entry Into Naval Service," and MILPERSMAN 1910-142, "Separation by Reasons of Misconduct- Commission of a Serious Offense. By a vote of 3-0, the Board found by a preponderance of the evidence that the evidence presented did not support any of the bases for separation. On 23 June 2022 Petitioner was discharged.

i. On 5 August 2022 NPC notified the Honorable ██████████ Member, U.S. House of Representatives that Petitioner was recommended for ADSEP by the Commanding Officers (CO), Navy Reserve Center (NRC), ██████████ on April 4, 2022. In accordance with Military Personnel Manual Article 1910-704, Determining Separation Authority, the Secretary of the Navy is the separation authority for involuntary separation of members with 18 or more years of total active military service. In accordance with Military Personnel Manual Article 1910-208, ADSEP processing for Members beyond expiration of active obligated service (EAOS) or EOS, members may not be involuntarily extended beyond EAOS or EOS for Selected Reserve (SELRES) members for the sole purpose of ADSEP processing; this includes members who are held beyond EAOS or EOS for special court-martial or general court-martial and do not receive punitive discharges. Voluntary extensions may be requested from the Enlisted Performance and Separations Branch or Reserve Enlisted Status Branch/Full Time Support Recall and Conversions. It was determined that the NRC, Albuquerque did have documentation requesting reenlistment, however, based on Military Personnel Manual Article 1910-518, Findings and Recommendations, Petitioner was not authorized to reenlist or be retained without approval from the NPC. In accordance with Military Personnel Manual Article 1910-208, ADSEP processing for Members beyond EAOS or EOS, Petitioner was not given the opportunity to extend his contract time to await determination by the Secretary of the Navy for his ADSEP package. Petitioner may submit a petition to the Board for Correction of Naval Records (BCNR) and request that his discharge be rescinded and be granted an extension to his contract allowing for due process on his ADSEP.

j. On 11 August 2022 the Commander, Navy Reserve Force notified Petitioner that on 2 June 2022, a Navy Reserve Force Command Inspector General (IG) investigating officer (IO) contacted Petitioner to clarify his complaint. Petitioner alleged that in March 2021, Commander ██████████ former CO, NRC Albuquerque had him debarred from ██████████ Base and all Navy Region Southwest Installations, which prevented Petitioner from accruing satisfactory drills. Additionally, Petitioner alleged Commander P.... entered derogatory information into the Defense Information Security System that created a flag on his security clearance. Lastly, Petitioner alleged that ██████████ conducted an ADSEP Board which voted to retain him. Petitioner further stated that following the ADSEP, ██████████ was unable complete his requests for a unit change and an extension of his EAOS until NPC completed a final review and determination of the ADSEP process which had not taken place at the time of Petitioner’s complaint.

Following a review of the Navy Standard Integrated Personnel System, the IO determined that Petitioner discharged from the Navy Reserve as of his EAOS. As a result, Navy Reserve Force Command IG is

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unable to address Petitioner's complaint as an IG matter. Instead, Petitioner has the right to petition the BCNR for consideration in this matter, and the Navy Reserve Force Command IG will take no further action and considers this case closed.

k. In the advisory opinion, attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action. Stating: Petitioner was a SELRES member of the Navy Reserves until his EOS of June 23, 2022. At the time of his discharge at EOS, he had 19 years and 6 months of service. Petitioner is seeking to have his discharge rescinded and his enlistment extended while the results of his ADSEP Board which must be reviewed by the Secretary of the Navy are processed.

The AO concluded, "[t]here is a basis for relief. BCNR should rescind Petitioner's discharge so he can be granted an extension on his contract. This will allow Petitioner's administrative discharge package to be fully considered by the correct authority."

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action. The Board concluded that Petitioner was [p]rocessed for mandatory ADSEP processing, and his ADSEP Board voted 3-0 that that the evidence presented did not support any of the bases for separation. In accordance with reference (b),¹ Petitioner's ADSEP package was properly submitted to NPC (PERS-913) via the chain of command. Petitioner was discharged at the end of his contract on 23 June 2022. However, there is no evidence to show Petitioner was offered the opportunity to extend enlistment while his ADSEP package was adjudicated, in accordance with reference (c).² The Board determined that Petitioner was denied due process to have his ADSEP package be considered at each level and processed to completion prior to his discharge. As a result, Petitioner missed the opportunity to drill and receive pay, and to potentially become retirement eligible while waiting for the processing of his ADSEP package.

RECOMMENDATION

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

The record of discharge from the U.S. Naval Reserve effective 23 June 2022, is rescinded.

Petitioner executed an agreement to extend enlistment (NAVPERS 1070/621) for 18 months, operative on 24 June 2022.

¹ Reference (b), certain bases for ADSEP are so detrimental to good order and discipline, mission readiness, and appropriate standards of performance and conduct, that processing for ADSEP is mandatory. Commanding Officers must process individuals for separation who have committed the following, based on reliable evidence: stalking. NPC retains authority to direct separation processing even for misconduct not listed above. Separation processing directed by NPC is mandatory. In mandatory processing cases in which an administrative Board makes findings of no misconduct or recommends retention or suspended separation, forward cases to PERS-832 for active duty or PERS-913 for final action.

² Reference (c) members may not be involuntarily extended beyond EAOS, or EOS for SELRES members for the sole purpose of ADSEP processing. This includes members who are held beyond EAOS/EOS for special court-martial or general court-martial and do not receive punitive discharges, however, voluntary extensions may be requested from NPC, Enlisted Performance and Separations Branch (PERS-832) or Reserve Enlisted Status Branch/FTS Recall and Conversions (PERS-913).

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Note: Providing that Petitioner is otherwise qualified, his restoration to the U.S. Naval Reserve must be effected within 90 days of the date of this letter.

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.

2/6/2023

[REDACTED]

Deputy Director

[REDACTED]