



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

[REDACTED]
Docket No. 2523-23

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) Case Summary

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 character of service listed on his Certificate of Release from Active Duty (DD Form 214) show "Honorable" vice "Pending Appeal."

2. The Board, consisting of [REDACTED], [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 3 May 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include reference (b).

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Navy for a period of four years. Additionally, Petitioner voluntarily agreed to extend his enlistment upon conclusion of the four-year period for an additional two years. On 26 March 1968, Petitioner began active duty. On 11 April 1968, Petitioner signed a two year extension.

c. On 21 March 1972, through civilian counsel, Petitioner requested to be discharged from the Navy on or about 25 March 1972. Counsel for Petitioner cited [REDACTED] as a

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reference case; Petitioner argued that the extension he signed is a legal nullity for the same reasons alleged in [REDACTED].

d. On 26 March 1972, Petitioner's agreement to extend enlistment became operative for 24 months.

e. On 5 April 1972, Petitioner's commanding officer informed Chief of Naval Personnel (CNP) that Petitioner is contesting the legality of his extension of enlistment because it was signed by a warrant officer.

f. On 25 April 1972, CNP informed Petitioner's counsel that the United States Government position is that the District Court's decision in the case as cited was in error and an appeal will be taken from that decision. Accordingly, the release of Petitioner was not approved.

g. On 28 April 1972, Petitioner received non-judicial punishment. Specifics of the charge(s) and specification(s) were not available in the record.

h. On 12 July 1972, U.S. District Court for the Central District of [REDACTED] held that Petitioner's extension of enlistment agreement was invalid because the officer who signed the agreement and administered the oath was not a commissioned officer as required by naval regulation.

i. On 18 July 1972, the Judge Advocate General (JAG) was advised informally that the District Court directed Petitioner to be "released from the custody and control of the U.S. Navy forthwith."

j. On 19 July 1972, CNP directed Petitioner's release from custody and control of the U.S. Navy in accordance with U.S. District Court for the Central District of [REDACTED] order and that Petitioner be issued a DD Form 214 with the following entries:

Block 11A: Release from Custody and Control Pending Appeal of USDC, Central District of [REDACTED] order of 12 Jul 72.

Block 11C: Pursuant USDC, Central District of [REDACTED] order of 12 Jul 72

Block 13A: None

k. On 27 July 1972, Petitioner was discharged from the Navy, Block 13 (character of service) shows "Pending Appeal."

l. On 4 December 1972, U.S. Court of Appeals for the Ninth Circuit reversed the District Court's order of 12 July 1972.

m. On 23 January 1973, the U.S. District Court for the Central District of [REDACTED] ordered, and adjudged that the U.S. Navy may recall Petitioner to active duty in the U.S. Navy for a period of one year, seven months, and twenty-eight days.

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- n. On 7 May 1973, the Supreme Court denied Petitioner's petition for writ of certiorari.
- o. On 13 July 1973, JAG was advised by the U.S. Attorney that, on 2 July 1973, the presiding judge ordered that his judgement of 23 January 1973 remains in effect and that the U.S. Navy may proceed to recall Petitioner back to active duty. CNP ordered Petitioner to report, thirty days after receipt of orders, to Commanding Officer, [REDACTED] for duty.
- p. On 27 July 1973, an attempt was made to make personal delivery of naval orders to Petitioner informing him that he was recalled to active duty.
- q. On 23 November 1976, Commandant, [REDACTED] Naval District notified CNP that in absence of further direction from CNP and due to the impending closure of the [REDACTED] Naval District Staff Headquarters, Petitioner's service record was being forwarded to CNP for further disposition.
- r. On 17 January 1978, CNP notified Petitioner via letter that, in view of his UA from the Navy, he was being considered for discharge Under Other Than Honorable Conditions from the Navy by reason of misconduct due to prolonged UA for one year or more. Petitioner was advised that unless he submitted a written objection to CNP, he would be issued a discharge Under Other Than Honorable Conditions.
- s. In an undated statement, Petitioner responded to CNP. Petitioner stated in part:
- In June of 1972, I underwent all necessary exams and paper work at [REDACTED], to be processed out of the United States Navy. I left a forwarding address, received a DD Form 214 and departed [REDACTED]. Until receiving this correspondence I have not thought of or heard from the United States Navy since June 1972. I received your correspondence through the mail; I can only assume any other attempt to contact me would have the same way.
- t. On 21 April 1978, Petitioner was issued an administrative remarks noting issued an Honorable discharge by reason of convenience of the government.
- u. Petitioner contends that in filing for his VA benefits, his current character of service listed on his DD Form 214 is not recognized as valid; he did receive a Honorable discharge certificate but it is not reflected on his DD Form 214.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that, given the totality of his circumstances, Petitioner's request merits relief.

The Board noted that Block 13a (Character of Service) of the Armed Forces of the United States Report of Transfer or Discharge (DD Form 214) erroneously reflects Petitioner's character of service as "Pending Appeal." In this regard, the Board determined that the error was administrative and concluded that Block 13a of the DD Form 214 should accurately reflect his characterization of service as "Honorable." Further, Petitioner's DD Form 214 should reflect his

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period of service from 26 March 1968 to 21 April 1978, and that Petitioner accumulated time lost for the period from 28 July 1972 to 21 April 1978.

Furthermore, although not specifically requested by the Petitioner and based on the same rationale for correcting Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, separation code, and reenlistment code should be changed to Secretarial Authority. The Board concluded it was in the interests of justice to grant Petitioner relief as a matter of equity.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 21 April 1978, Petitioner's character of service was "Honorable," the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the separation authority was "MILPERSMAN 1910-164," and the reenlistment code was "RE-1J." Additionally, NPC is directed to make any corresponding changes to Blocks 12c - 12g, as required. Block 29 shall reflect Time Lost from 28 July 1972 until 21 April 1978.

That no further changes be made to Petitioner's record.

That a copy of this report 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. 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.

5/18/2023

