



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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ARLINGTON, VA 22204-2490

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Docket No. 2997-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USNR,
XXX-XX-█

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 12304b
(c) 10 U.S.C. § 12301
(d) 10 U.S.C. § 1168
(e) DoD 7000.14-R, Department of Defense Financial Management Regulation; Volume 7A: "Military Pay Policy – Active Duty and Reserve Pay"; Chapter 58: "Pay and Allowances for Inactive Duty Training (IDT)"
(f) BUPERSINST 1900.8E, Certificate of Release or Discharge from Active Duty (DD 214, DD214C, DD 214WS, and DD 215), 27 August 2018

Encl: (1) Remand Order, in the case of *[Petitioner] v. The United States*, in the United States Court of Federal Claims, █, filed 4 April 2023
(2) DD Form 149 w/attachments
(3) BCNR e-mail to NPPSC, subj: RE: Case: NR20230002997 Party: [Petitioner], sent Monday, December 11, 2023 @ 10:47:30 AM (with preceding e-mail chain and attached DWOWS ticket screen shot)
(4) COMNAVPERSCOM Msg, subj: BUPERS Mobilization Order: 2549/1325, dtg 110204Z SEP 19
(5) COMNAVPERSCOM Msg, subj: BUPERS Orders: [Petitioner], dtg 300234Z SEP 19
(6) MMPA History (Basic Pay) as of 21 December 2020
(7) COMNAVPERSCOM Msg, subj: Active Duty for Special Work Mod ICO [Petitioner], dtg 250358Z NOV 19
(8) COMNAVPERSCOM Msg, subj: Mobilization Order Modification ICO [Petitioner], dtg 290334Z JAN 20
(9) COMNAVPERSCOM Msg, subj: Mobilization Order Extension ICO [Petitioner], dtg 150525Z JUN 20
(10) COMNAVPERSCOM Msg, subj: Demobilization Order ISO Navy Reserve Mitigation Measures in Response to Coronavirus FOR: 1670 [Petitioner], dtg 150534Z JUN 20
(11) COMNAVPERSCOM Msg, subj: Demobilization Order Modification ISO Navy Reserve Mitigation Measures in Response to Coronavirus for: 2250 [Petitioner], dtg 120358Z AUG 20
(12) NAVCOMPT 3065, Leave Request/Authorization, 14 August 2020
(13) DD Form 1351-2, Travel Voucher or Subvoucher, 27 August 2020

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- (14) Petitioner's E-mail to [REDACTED], subj: DEMOB, sent Thursday, August 20, 2020 @ 1:28 PM (with following e-mail chain)
- (15) Petitioner's E-mail to [REDACTED], subj: Leave Chit, sent Sunday, September 2020 @ 8:10AM (with following e-mail chain)
- (16) Separation/Retirement Interview Sheet, 20 August 2020
- (17) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20191101 – 20201001)
- (18) Petitioner's E-mail to [REDACTED], subj: Checking In, sent Monday, October 5, 2020 @ 8:40 PM
- (19) NSIPS MOB History
- (20) NSIPS IDT Detail Review
- (21) Auto-Generated E-mail to Petitioner, subj: NSIPS R&S DD-214WS Routing Notification, sent Friday, December 4, 2020 @ 3:40 PM
- (22) DD Form 214
- (23) MMPA History (Leave) as of 21 December 2020
- (24) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (202010021 – 20211031)
- (25) Complaint, in the case of *[Petitioner] v. The United States of America*, in the United States Court of Federal Claims, [REDACTED], filed 23 December 2022
- (26) DFAS Letter, re: Indebtedness to the United States Government, Account No. [REDACTED], 16 February 2023
- (27) NPPSC Memo 9220 N1, subj: NPC Request for Advisory Opinion, NR20230002997 [Petitioner], 1 August 2023
- (28) Navy Reserve Forces Command Memo 5420 Ser N3/677, subj: Advisory Opinion in case of [Petitioner], 22 September 2023
- (29) [REDACTED] Memo 7220 Ser N00/308, subj: Request for Advisory Opinion, NR20230002997 [Petitioner], 5 October 2023
- (30) [REDACTED] Memo, subj: Requested Amplifying Information for Board of Corrections for Naval Records (BCNR) from [REDACTED] [Petitioner], 6 October 2023
- (31) Petitioner's Memo, subj: Docket #2997-23 – Supplemental Statement in light of Advisory Opinions, 29 October 2023

1. By Order dated 4 April 2023, the United States Court of Federal Claims (COFC) remanded the case filed by the Subject, hereinafter referred to as Petitioner, to the Board for Correction of Naval Records, hereinafter referred to as the Board, for original consideration of his claims of wrongful discharge and entitlement to basic allowance for housing (BAH).¹ See enclosure (1). On or about 13 April 2023, Petitioner filed enclosure (2) with the Board in accordance with reference (a).²

¹ Petitioner did not previously present these particular allegations of error or injustice to the Board before seeking relief from the COFC. He did, however, previously seek relief from the Board in several other regards. In his complaint to the COFC, Petitioner alleged these two errors, in addition to the wrongful denial of Family Separation Allowance. The latter issue was addressed by the Board in Docket No. 6197-18, and therefore is not a subject of this remand.

² In enclosure (2), Petitioner made the following specific request for relief:

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2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error or injustice on 14 December 2023 and, pursuant to its regulations, determined that corrective action indicated below should be taken on Petitioner's naval record.

Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. Although the COFC remanded that portion of Petitioner's complaint pertaining to his BAH request to the Board, resolution of this issue does not require the correction of any naval record. Petitioner need only have formally requested correction of his pay through his unit.³ Additionally, the Board does not have access to the payments previously made to Petitioner and his spouse in order to make the findings necessary to know what pay and allowances he may be due. Accordingly, the Board's staff coordinated informally with the Navy Pay and Personnel Support Center (NPPSC) to resolve this issue on Petitioner's behalf, and did not present it to the Board for resolution. As of 11 December 2023, the NPPSC had submitted a Defense Workload Operation Web System (DOWWS) ticket and it was being processed by DFAS.⁴ See enclosure (3).

4. Following are the relevant facts of Petitioner's case:

a. On 11 September 2019, Petitioner was involuntarily ordered to active duty in accordance with reference (b) for a period of 148 days (plus out-processing and accrued leave), unless released sooner by the order issuing authority. Specifically, he was ordered to report to [REDACTED], for temporary duty on 6 March 2020.⁵ See enclosure (4).

I request the board correct my wrongful discharge by changing my date from 08OCT2020 to 31DEC2020, paying off the outstanding debt the Navy has issued, based on an overpayment from 09OCT2020 – 31NOV2020, and paying \$6,869.95 to me. \$23,124.76 in pay and \$6,074.79 in allowances for the additional service time. This amount, \$29,199.55, should be deducted by \$373.02 because the Navy bought 1.5 days of unused leave without my authorization. The remaining balance of \$28,826.53 should be used to pay \$21,956.58 towards the outstanding debt the Navy has issued, based on overpayment from 09OCT2020-31NOV2020. \$6,869.95 should be dispersed to me. Using 28 days of leave, from 04-31DEC2020, my account should be credited with 5 days of unused leave carried over.

The Board notes that much of this requested relief is beyond the Board's authority to grant. In accordance with reference (a), the Board is empowered to correct errors and/or remove injustices from Petitioner's naval record. It is not, however, empowered to disperse money or to determine the amount of benefits that may be due to him. Any pay, allowance, or benefits that may accrue as a result of any corrective action taken on Petitioner's naval record by the Board will be calculated and dispersed by the Defense Finance and Accounting Service (DFAS), and may include offsets for civilian income received during the disputed period.

³ The e-mails in the record reflecting that Petitioner made certain administrative personnel in his unit aware of this issue does not constitute a formal request.

⁴ The DOWWS case identification number is [REDACTED]. The point of contact for this action with contact information is included in enclosure (3).

⁵ These orders included intermediate activities for mobilization processing. Specifically, Petitioner was ordered to proceed from [REDACTED] to the [REDACTED] at [REDACTED] not later than 9 March 2020 for standard mobilization screening and processing, before returning to [REDACTED] on or about 14 March 2020. These orders stated Petitioner's ultimate activity as [REDACTED], with an estimated reporting date of 1 April 2020 and an estimated detachment date of 31 July 2020, but specified that the actual date of detachment and details of redeployment would be ordered via an official demobilization order to be published approximately 90 days prior to demobilization.

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b. On 30 September 2019, while the mobilization orders referenced in paragraph 4a above were pending, Petitioner was ordered to active duty for special work (ADSW) at [REDACTED] in accordance with reference (c) from 1 October 2019 to 31 March 2020, with a reporting date of on or about 2 October 2019.⁶⁷ See enclosure (5).

c. On 25 November 2019, Petitioner's ADSW orders, referenced in paragraph 4b above, were modified to adjust his end date to 5 March 2020. This amendment was made due to the overlapping nature of Petitioner's ADSW and mobilization orders. They specified that Petitioner would transition directly from ADSW status to mobilization status with no break in service or pay. See enclosure (7).

d. On 29 January 2020, Petitioner's mobilization orders, referenced in paragraph 4a above, were modified to authorize flight incentive pay. See enclosure (8).

e. On 6 March 2020, Petitioner's active duty status with [REDACTED] formally transitioned from ADSW to mobilization.⁸ See enclosure (8).

f. On 8 March 2020, Petitioner departed [REDACTED] to report to the [REDACTED] [REDACTED], in accordance with the mobilization order referenced in paragraph 4a above. He arrived at the [REDACTED] that same day, and subsequently departed the [REDACTED] to return to [REDACTED] on 13 March 2020. See enclosure (8).

g. On 15 June 2020, Petitioner's mobilization orders referenced in paragraph 4a above were extended due to the exigencies of the travel restrictions imposed due to the COVID-19 pandemic. Specifically, Petitioner was informed that he should expect to detach from [REDACTED] no later than 13 August 2020, and that a demobilization order would be sent by separate correspondence directing the actual detachment date. See enclosure (9).

h. Shortly after the order referenced in paragraph 4g extending Petitioner's mobilization period was issued, Petitioner was issued the separate demobilization order referenced in that message. Specifically, Petitioner was directed to detach from [REDACTED] when directed by his Reporting Senior (RS), but no later than 13 August 2020.⁹ These orders further directed [REDACTED] to "audit the DD214 worksheet and forward complete DD214 package to the Reserve Services Branch (RSB) at [REDACTED]," to forward the draft DD Form 214 to Petitioner for review and updates, and to verify that Petitioner completed medical screening,

⁶ These orders directed Petitioner to depart the place from which he was ordered to active duty (i.e., his home at [REDACTED]) not earlier than 1 October 2019, and to report directly to [REDACTED] on or about 2 October 2019.

⁷ Petitioner's Master Military Pay Account reflects that his basic pay started on 1 October 2019. See enclosure (5).

⁸ Enclosure (8) is endorsed to reflect Petitioner's "arrival" on the modified mobilization order referenced in paragraph 4d above at 0700 hours.

⁹ These demobilization orders further directed that Petitioner would administratively report to [REDACTED] on or about 14 August 2020 for demobilization processing, and be returned to his Naval Reserve Activity (NRA) on or about 31 August 2020.

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VOW to Hire Heroes Act compliance, and mandatory briefings before forwarding Petitioner his completed DD Form 214.¹⁰ See enclosure (10).

i. On 12 August 2020, Petitioner's demobilization orders referenced in paragraph 4h above were modified to adjust his detachment date from no later than 13 August 2020 to no later than 24 August 2020. His report date to his NRA was also adjusted from on or about 31 August 2020 to on or about 26 October 2020.¹¹ See enclosure (11).

j. On 14 August 2020, Petitioner submitted a request for terminal leave at his home in [REDACTED], from 24 August 2020 through 15 September 2020.¹² See enclosure (12).

k. According to the travel voucher submitted by Petitioner on 8 August 2020, Petitioner departed [REDACTED] on 8 August 2020 and arrived at the [REDACTED] [REDACTED] the same day. He claimed to have departed the [REDACTED] [REDACTED] on 10 August 2020, and arrived at the [REDACTED] [REDACTED] that same day. He claims to have remained at the [REDACTED] [REDACTED] until his departure and arrival at his home of record on 15 August 2020.¹³ See enclosure (13).

l. By e-mail dated 20 August 2020, Petitioner provided his demobilization checklist to the [REDACTED] Admin Leading Chief Petty Officer (LCPO), and informed her of his outstanding demobilization requirements.¹⁴ He also stated in this e-mail that he "attached his DD-214," but it is not clear from the record specifically what he was referring to. See enclosure (14).

m. By e-mail dated 27 August 2020, the [REDACTED] Admin LCPO responded to Petitioner's e-mail referenced in paragraph 4l above. Specifically, she informed him that [REDACTED] was on hold in submitting any documents for his demobilization since he was still pending medical clearance at that time. She also requested that he return his demobilization checklist signed and an attached terminal leave chit completed, pending final dates based upon when he obtained medical clearance. See enclosure (14).

n. On 13 September 2020, Petitioner sent an "open-date" leave chit to the [REDACTED] Admin LCPO, apparently pursuant to the request referenced in paragraph 4m above. See enclosure (15).

¹⁰ Due to the exigencies of the COVID-19 pandemic and the resulting manpower challenges, Petitioner was among the mobilized reservists who were permitted to complete the demobilization process remotely through [REDACTED] rather than travelling to the ECRC at [REDACTED]. See enclosure (29) for more discussion regarding these circumstances.

¹¹ Petitioner's NRA was also VP-62. He was mobilized with the same unit that he served in his reserve capacity.

¹² Enclosure (11) did not include the signature of a cognizant authority indicating approval of this request. Although he was apparently at his home of record and not performing military duties during these dates, Petitioner was not charged for any leave until 14 September 2020. Accordingly, this terminal leave request was never acted upon, likely due to delays in the remote processing of his demobilization due to the exigencies of the pandemic.

¹³ The Board presumes that these hotel stays were associated with the restrictions on movement/quarantine requirements imposed due to the pandemic, which was the reason for the modification to Petitioner's demobilization orders referenced in paragraph 4i above.

¹⁴ Specifically, Petitioner indicated that he was unable to complete the Transition Assistance Program due to log-in difficulties; that he had not been paid for his travel claim; that he hadn't received BAH-with dependents, which he claims should have begun approximately 30 January; and that he was scheduled for an x-ray on 24 August.

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o. On 15 September 2020, Petitioner submitted a separation worksheet in which he reported his separation leave dates as 24 August 2020 to 15 September 2020, his separation date as 15 September 2020, and that he had completed his separation physical and did not require further dental treatment. See enclosure (16).

p. On 29 September 2020, Petitioner's RS issued him a regular fitness report (FITREP) for the reporting period 19 November 2001 to 20 October 2001. In describing Petitioner's duties, this FITREP listed Petitioner's period of mobilization as 6 March 2020 to 15 September 2020 and his current duty status in block 5 as "Inactive" (i.e., drill status). Petitioner was not available to sign this FITREP. See enclosure (17).

q. On 5 October 2020, Petitioner sent an e-mail to the [REDACTED] Admin LCPO to "check-in to make sure [he] wasn't missing anything." He attached a new, open-date leave chit to this e-mail, because he stated that he would accrue 2.5 days of leave by the end of that month and he believed that that would push him past the date on his orders that he was supposed to report back to [REDACTED] as a reservist.¹⁵ See enclosure (18).

r. According to the Navy Standard Integrated Personnel System (NSIPS), Petitioner was released from active duty (i.e., deactivated) on 8 October 2020, and reported back to his NRA and returned to his reserve billet on 9 October 2020. See enclosure (19).

s. According to the NSIPS, Petitioner received credit and pay for drill performed on 13, 14, and 15 November 2020. The NSIPS also reflects that Petitioner's authorized absences from drill (due to his mobilization) expired on 30 September 2020. See enclosure (20).

t. On 4 December 2020, Petitioner received an automated message indicating that a DD Form 214WS had been routed to him for action in NSIPS.¹⁶ See enclosure (21).

u. On 30 December 2020, Petitioner's final DD Form 214 for his period of active duty was signed by an authorizing official, indicating that he was released from active duty on 8 October 2020, and transferred back to the Navy Reserve.¹⁷ See enclosure (22). As a result of the delayed issuance of the DD Form 214, Petitioner's active duty mobilization pay was not stopped upon his release from active duty on 8 October 2020, resulting in payments to which he was not entitled and the indebtedness at issue in this case. See enclosure (22).

v. On 31 October 2021, Petitioner was issued a periodic FITREP for the reporting period 2 October 2020 to 31 October 2021. In describing Petitioner's duties, this FITREP stated that Petitioner was mobilized from 1 October 2020 to 8 October 2020.¹⁸ Petitioner signed this FITREP on 6 November 2021, indicating his intent not to submit a statement in response to the contents. See enclosure (24).

¹⁵ Petitioner also indicated in this e-mail that he was still being paid BAH-without dependents, and that he had not received "the paper claim for ECRC from March."

¹⁶ Per reference (f), the DD Form 214WS is used to ensure accuracy and allows member's verification for completeness prior to the final preparation and signatures of the DD Form 214.

¹⁷ Petitioner was charged for terminal leave from 14 September 2020 to 8 October 2020. See enclosure (23).

¹⁸ This reported period was limited to that which was encompassed in the FITREP's reporting period.

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(2) By memorandum dated 22 September 2023, NFRC responded to the Board's request for information.²⁵ This AO informed the Board that the applicable Navy Mobilization Processing Site (NMPS) coordinates with the servicing NPPSC activity to close active-component Master Military Pay Account (MMPA), and prepare and issue the DD Form 214. In Petitioner's case, the appropriate NMPS site was the ECRC Detachment at [REDACTED], via remote processing, and the servicing NPPSC activity was Retirement Services Branch (RSB) at TSC [REDACTED], as stated in Petitioner's demobilization orders. Finally, NFRC confirmed that the NSIPS information referenced above "matches the current records in the system." See enclosure (28).

(3) By memorandum dated 5 October 2023, [REDACTED] responded to the Board's request for information. First, [REDACTED] informed the Board that it remotely processed all Reserve demobilizations during COVID-19 and was provided the process by which this was accomplished.²⁶ Next, [REDACTED] informed the Board of common remote demobilization issues. Specifically, [REDACTED] stated that the imprecise dates listed on demobilization orders made terminal leave dates and processing timelines difficult and up to TSC [REDACTED] to determine, and that they did not have TOPS access to submit transactions directly to TSC [REDACTED] which would cause each transaction to take longer than normal to process. Finally, with regard to Petitioner's case, [REDACTED] informed the Board that Petitioner provided his initial demobilization documents to [REDACTED] administrative clerk on 20 August 2020, and the remaining documents on 27 August 2020. He also provided a signed leave request (without specific leave dates) to the administrative clerk which was to be completed/corrected once the terminal leave dates were verified with PSD, but [REDACTED] noted that proof of a finalized leave request with an approving official's signature or proof of TOPS transaction was not found in the command records. [REDACTED] was unable to determine what caused the delay in Petitioner receiving his DD Form 214 two months after his release from active duty on 8 October 2020. See enclosure (29).

(4) By memorandum dated 6 October 2023, the ECRC responded to the Board's request for information.²⁷ Although none of the relevant ECRC officials from the period in question remained at the ECRC, the SJA was able to track down and interview three officers who were in place during the period in question to provide answers to the relevant questions.

²⁵ Based upon the information provided, NFRC stated that it is not the appropriate authority to issue an opinion regarding whether the date of Petitioner's release from active duty listed on his DD Form 214 is correct, or to determine the reason for any delay between separation from active duty and issuance of Petitioner's DD Form 214.

²⁶ The remote demobilization process was described as follows: (1) The demobilization orders would be e-mail to the respective members, along with a list of all required documents and steps to start the remote demobilization; (2) Once the demobilization package was completed by the member, along with the other administrative requirements, the administrative clerk would initiate a Transaction Online Processing System (TOPS) transaction to Personnel Support Detachment (PSD) [REDACTED], which would in turn forward the transaction to TSC [REDACTED] due to [REDACTED] inability to initiate TOPS transactions directly to TSC; (3) [REDACTED] would receive a response via TOPS after all documents were reviewed and approved by TSC [REDACTED], which contained the date the member would be separated and the total leave balance; and (4) Assuming no further changes and that all documents were approved by TSC, [REDACTED] would then wait for a TOPS transaction directing the member to access NSIPS and review the draft DD Form 214s to finalize the separation process.

²⁷ This memorandum was signed by the ECRC Staff Judge Advocate (SJA).

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(a) This memorandum first addressed the question of how the ECRC processed demobilization separations during the COVID-19 timeframe. The TSC began to experience personnel shortages due to COVID-19 exposures and social distancing manning restrictions, and as a result it stopped seeing anyone face-to-face for DD Form 214 processing as it had normally done. Instead, it moved to a fully-remote, electronic DD Form 214 process, which was accessed via NSIPS and Bureau of Personnel Online websites. As of at least 1 June 2020, virtual demobilization began to be more commonly permitted, “as long as a service member could articulate extenuating circumstances to justify it, as a way of allowing servicemembers to be closer to family while completing the demobilization requirements.” [REDACTED] was among the units which were given permission to demobilize their own personnel. In such cases, the ECRC would have assigned a personnel specialist chief (PSC) to assist it with demobilization requirements as needed, but it was up to the unit to communicate its needs to the PSC in order for any issues to be tracked or responded to. The ECRC SJA stated that service members doing virtual demobilizations after completing their required restriction on movement quarantine would have needed to report to their Navy Reserve Center each day to complete their demobilization requirements, but by policy no one should have been released from ECRC without a DD Form 214 in hand unless their signed a counseling form accepting the risk of leaving without a DD Form 214 in hand. In reality, however, due to the backlog in DD Form 214 processing, TSC often issued DD Form 214s without ECRC review, and eventually had to activate a reserve unit to assist in clearing the backlog.

(b) Next, the memorandum addressed the ECRC’s timeline for completion of demobilization separations during that timeframe. Specifically, the memorandum stated that it should have taken four weeks for personnel to clear ECRC’s demobilization process – two weeks quarantine and two weeks processing. However, “in reality it probably took six weeks to get Sailors home.”

(c) Some of the common issues ECRC faced when remotely demobilizing Sailors during this timeframe included the lack of staff necessary to track all the requirements that remote demobilized Sailors often did not complete in a timely manner; that some Sailors disregarded mobilization orders and proceeded directly to their home of record when they arrived back from mobilization; that some Sailors left ECRC without waiting to receive their DD Form 214; communications problems, wherein some Sailors were provided conflicting information about demobilization from entities outside of ECRC; and “numerous issues with processing DD-214’s likely exacerbated by TSD’s hurried transition to electronic DD-214 issuance and manning shortages due to the pandemic.” With regard to the latter issue, ECRC reported that it often fields complaints that demobilized Service members could not return to work because they did not have a DD Form 214 to provide. This was the reason for the ECRC policy that Service members needed to sign a counseling form accepting the risk of being released from ECRC without a DD Form 214.

(d) Finally, ECRC had no information to provide regarding Petitioner’s case in particular.

See enclosure (30).

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z. By memorandum dated 29 October 2023, Petitioner provided a supplementary statement responding to the AOs referenced in paragraph 4y above. In relevant part, Petitioner asserts that he would have had no cause to send the e-mails referenced in paragraphs 4n and 4q above if he had already started his terminal leave and was to separate from the Navy on 8 October 2020. Petitioner also asserts that he was paid his monthly pay and allowances in October and November 2020, which supports his assertion that he was still on active duty. Furthermore, he claims that he was unable to drill as a reservist. Specifically, he claims to recollect that his drills for October through December 2020 were moved into calendar year 2021 because he could not be paid for drills while he remained on active duty. Finally, he asserts that he received the first draft of his DD Form 214 on 4 December 2020, and that that was the first day he could have been lawfully discharged in accordance with reference (d). He responded to each of the respective AOs referenced in paragraph 4y above as follows:

(1) In response to the NRFC AO, Petitioner asserts that the NSIPS entry indicating that he reported back to his NRA in a drilling status on 9 October 2020 was inaccurate. To his recollection, he did not, and could not, drill until January 2021 because he was still on active duty into December 2020.

(2) In response to the ECRC AO, Petitioner noted that he did not demobilize at ECRC because he was with an aviation squadron.

(3) In response to the [REDACTED] AO, Petitioner stated that he submitted the DD Form 214 worksheet on 20 August 2020 and the remaining demobilization forms on 27 August 2020, which was three days ahead of the theoretical timeline explained in the ECRC AO, and that he routinely checked in with the [REDACTED] Admin LCPO.

See enclosure (31).

5. Upon careful review and consideration of all of the evidence of record, the Board found as follows:

a. Contrary to his contention, Petitioner did not remain on active duty until December 2020. The objective evidence overwhelmingly reflects that Petitioner was released from active duty on 8 October 2020, and returned to his inactive reserve status on 9 October 2020. First, the DD Form 214 at enclosure (22) reflects that Petitioner was released from active duty on 8 October 2020 and transferred to the Navy Reserve. Normally, this alone would be conclusive evidence given the presumption of regularity, but the Board did not rely upon this information alone to reach its conclusion given the irregularities in the processing of this DD Form 214 under the circumstances. In addition to the DD Form 214, the NSIPS entry at enclosure (19) also reflects that Petitioner was released from active duty on 8 October 2020, and that he “[r]eported back to [his] NRA and returned to [his reserve] billet” on 9 October 2020. As Petitioner’s NRA (i.e., [REDACTED]) was the same unit with which he was mobilized, it was the entity best positioned and informed to know when Petitioner officially transitioned from a mobilized to an inactive status. Accordingly, the Board found the fact that [REDACTED] caused this NSIPS entry to be created, recording his “report back” and “return to [reserve] billet” on 9 October 2020, to be very persuasive evidence in this regard. Additionally, [REDACTED] indicated that Petitioner’s last day in a

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mobilized status was 8 October 2020 in the FITREP issued at enclosure (22), and Petitioner did not object to or take action to correct this assertion when he signed this document on 6 November 2021. Finally, and most convincingly, Petitioner received credit for performing reserve drill on 13-15 November 2020 (see enclosure (18)). As reference (e) prohibits a reserve member from accruing compensation for inactive duty for training (IDT) performed on a day on which he was also entitled to basic pay for active duty,²⁸ Petitioner clearly was not entitled to basic pay for active duty when he received credit and pay for drill performed on these days. Petitioner's claims in enclosure (31) to recollect that he was not permitted to perform reserve drill until January 2021, but his recollection in this regard is clearly erroneous given the unrefuted evidence that he was credited with drill performed during this period.

b. In addition to conclusively establishing that Petitioner was released from active duty on 8 October 2020, the evidence also reflects that Petitioner did not actually believe himself to remain on active duty until December 2020 as he claims. In support of this conclusion, the Board notes that Petitioner was sent a DD Form 214WS for review on 4 December 2020, and apparently did not object or request a change to the 8 October 2020 release from active duty date. In fact, it appears that Petitioner did not object to this date until making his complaint to the COFC approximately two years after he received the final version of his DD Form 214. The Board also noted that Petitioner signed the FITREP at enclosure (22) without commenting on or correcting the information contained within it which indicated that his mobilization ended on 8 October 2020; that Petitioner made reference to returning a DD Form 214 in his e-mail to the [REDACTED] Admin LCPO on 20 August 2020; that Petitioner himself highlight his completion of all demobilization requirements as of 27 August 2020, and he submitted multiple open-ended leave chits to account for his terminal leave when the actual release from active duty date was determined; and that Petitioner signed enclosure (16) indicating his belief that his separation date was 15 September 2020. The Board's conclusion was also supported by the fact that Petitioner's last apparent e-mail communication with the [REDACTED] Admin LCPO regarding his demobilization requirements was made on 5 October 2020 (see enclosure 17 and paragraph 4q above). Although Petitioner claims in enclosure (31) that he stopped communicating with the Admin LCPO regarding his demobilization requirements because she asked him to stop, the Board found the timing of this final communication relative to Petitioner's release from active duty on 8 October 2020 to be persuasive evidence that he knew that the subject of his repeated e-mails (i.e., his demobilization date) had been resolved. Finally, Petitioner arrived at his home of record on 24 August 2020, and was apparently not reporting for duty or performing any military duties other than his aforementioned reserve drill duty in November. As a graduate of the U.S. Naval Academy and a Lieutenant Commander in the U.S Navy Reserve who had served as a commissioned officer for over 11 years as of the period in question, if he honestly believed himself to be entitled to active duty pay through December 2020 under these circumstances that belief was not a reasonable one.

c. The only evidence Petitioner has offered that he actually remained on active duty after 8 October 2020 is the fact that his DD Form 214 was not signed until 30 December 2020. The date of signature of the authorizing official on the DD Form 214 is not, however, determinative of his release from active duty date. The Board acknowledges that reference (d) provides that a

²⁸ See paragraph 2.2. of reference (e).

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mobilized reservist may not be released from active duty until his certificate of release from active duty is ready for delivery to him, but rejects Petitioner's novel argument that this means he remained on active duty until the DD Form 214 was signed and delivered. As discussed above, Petitioner was very clearly released from active duty on 8 October 2020. Based upon enclosure (29), this was likely the date that TSC informed [REDACTED] that his demobilization documentation was approved. With such approval, the DD Form 214 could have been completed on the spot, but for whatever reason it was not. The error in this case was not in Petitioner's release from active duty on 8 October 2020, but rather in the failure to provide Petitioner with a completed DD Form 214 at the time of his release.²⁹ Based upon the AOs, it is fairly obvious that this failure was due to exigencies presented by the COVID-19 pandemic, and the challenges presented by the resulting remote demobilizations. Specifically, the Board believed it likely that the unfamiliarity of [REDACTED] administrative personnel with the requirements of DD Form 214 processing which was normally done at the ECRC, along with the communication challenges described in the AOs, conspired to result in the delayed preparation of Petitioner's DD Form 214. Regardless of the reason, however, the failure to timely prepare and issue Petitioner a DD Form 214 in conjunction with his release from active duty does not mean that he was never so released – he clearly was. Petitioner could not be in both an active reserve and inactive reserve status at the same time, and it was obvious to the Board that he was in an inactive reserve status as of 9 October 2020.

d. The Board rejected Petitioner's interpretation of reference (d) to prohibit his release from active duty without a DD Form 214 in hand. Such interpretation would enable any military service to involuntarily retain a member on active duty beyond the term of their enlistment simply by refusing to prepare and sign the DD Form 214. That is clearly not the case, as the circumstances under which a Service member may be retained beyond the term of his or her enlistment are extremely limited. That interpretation is also not consistent with common practice in the military. While it is not the norm and is contrary to policy to release a member from active duty without a completed DD Form 214, it is not unusual for this to occur. As noted in the ECRC AO, this was a recurring problem for demobilizing reservists during the period in question due to the challenges presented by the COVID-19 working conditions. Petitioner was not unique in having been released from active duty without a DD Form 214; he is unique only in claiming a right to active duty service credit for service not performed under this novel theory.

e. While the Board found no error in Petitioner's release from active duty on 8 October 2020, it did find an injustice caused by the delay in issuing his DD Form 214. Specifically, this delay caused Petitioner's active duty pay to continue for a significant time after he was released from active duty, which in turn created a significant and unanticipated debt to the government for Petitioner. If Petitioner was not immediately informed of his change of status on 9 October 2020, he would have had no reason to know that he was receiving pay to which he was not entitled until his status was clarified. This hardship would not have occurred but for the error in failing to issue Petitioner's DD Form 214 in a timely manner. Accordingly, the Board found that equitable relief is warranted to mitigate the consequences of this delay. Specifically, the Board determined that Petitioner's naval record should be corrected to artificially adjust the date of his

²⁹ Per reference (f), "[p]ersonnel ordered to active duty in time of national emergency declared by either the President or Congress will be provided a DD 214 upon [release from active duty]." See paragraph 1.a.3. of enclosure (1) to reference (f).

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release from active duty to 12 November 2020, which is the day before he began to perform reserve drill duty. The Board determined that further equitable relief beyond this is not warranted because 12 November 2020 is the last possible day that Petitioner could arguably claim ignorance of his status given the drill that he began performing on 13 November 2020, and because concurrent receipt of active duty and IDT pay is prohibited by reference (e).

f. The Board emphasizes that the relief it recommends herein is purely equitable and directed pursuant to its broad authority pursuant to reference (a) to direct any change to a naval record it deems necessary to address an injustice.

6. Based upon its findings referenced in paragraph 5 above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

a. That Block 12a ("Separation Date this Period") of Petitioner's DD Form 214 issued on 30 December 2020 be changed from 8 October 2020 to 12 November 2020, and that block 12c ("Net Active Services this Period") and any other entries affected by this decision be adjusted accordingly.³⁰

b. Upon correction of Petitioner's naval record as directed herein, a copy of this record of proceedings is to be forwarded to the DFAS to determine what, if any, back pay and allowances may be due Petitioner as a result of this decision.

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

d. That no further corrective action be taken on Petitioner's naval record.

7. 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 titled matter.

8. Pursuant to the delegation of authority set out in SECNAVINST 5420.193, and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, made under the authority of reference (a), has been approved on behalf of the Secretary of the Navy.

12/26/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]

³⁰ This correction may be implemented through either the issuance of a new DD Form 214, or issuance of an original DD Form 215, at the discretion of Navy Personnel Command.