



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

[REDACTED]
Docket No. 3437-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
[REDACTED] (RET)

Ref: (a) Title 10 U.S.C. § 1552
(b) Public Law 102-484 section 4403, 23 Oct 92
(c) DoDI 1340.19, 17 Nov 93
(d) NAVADMIN 117/94, 1 Jul 94

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

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 show Petitioner received service credit from Public and Community Service (PACS) program.

2. The Board, consisting of [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 May 2023 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 record, 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. Petitioner was discharged with an Honorable character of service and was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 22 June 1977 to 10 June 1982 within three months of expiration of enlistment.

c. Petitioner was discharged with an Honorable character of service and was issued a DD Form 214 for the period of 22 June 1977 to 10 June 1982 for immediate reenlistment.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
[REDACTED] (RET)

d. In accordance with reference (b), section 4403 (Temporary Early Retirement Authority). The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces through 1995. During the active force drawdown period, the Secretary of the Navy may— (A) apply the provisions of section 6323 of title 10, United States Code, to an officer with at least 15 but less than 20 years of service by substituting "at least 15 years" for "at least 20 years" in subsection (a) of that section. Additional Eligibility Requirement. In order to be eligible for retirement by reason of the authority provided in sub-section (b), a member of the Armed Forces shall— (1) register on the registry maintained under section 1143a(b) of title 10, United States Code (as added by section 4462(a); and (2) receive information regarding public and community service job opportunities from the Secretary of Defense or another source approved by the Secretary and be afforded, on request, counseling on such job opportunities.

Section 4464 (Increased Early Retirement Retired Pay for Public or community service). (a) Re-computation of Retired Pay.—(1) If a member or former member of the Armed Forces retired under section 4403(a) or any other provision of law authorizing retirement from the Armed Forces (other than for disability) before the completion of at least 20 years of active duty service (as computed under the applicable provision of law) is employed by a public service or community service organization listed on the registry maintained under section 1143a(c) of title 10, United States Code (as added by section 4462(a)), within the period of the member's enhanced retirement qualification period, the member's or former member's retired or retainer pay shall be recomputed effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age.

e. In accordance with reference (c), 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.

f. In accordance with reference (d), this NAVADMIN expands eligibility for enlisted temporary early retirement for FY-95 that was previously promulgated. It is not an entitlement but a Temporary Early Retirement Authority (TERA) authorized by congress for service use until 30 September 1999, which is one part of a comprehensive strategy to meet increased manpower reduction requirements and to continue to shape the force for combat readiness. (the term retirement in this NAVADMIN refers to transfer to the Fleet Reserve.) TERA offers early retirement at a somewhat reduced monthly stipend to eligible members prior to completing 20 years of service.

All members taking early retirement must register for Public and Community Service registry (PACS) but are not required to accept employment. Applications for the FY-95 TERA program will be accepted through 16 September 1994. All members requesting TERA must request to retire no later than 31 December 1995.

g. Petitioner was transferred to Fleet Reserve with an Honorable character of service and was issued a DD Form 214 for the period of 9 March 1988 to 31 December 1994 due to early retirement (15 years).

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
[REDACTED] (RET)

h. On 22 June 1997, Petitioner would have completed 20 years.

i. On 5 October 2006, Commanding officer, Navy Reserve Personnel Center notified Petitioner that under Title 10, U.S.C. section 6331, upon his completion of 30 years of active/inactive duty service or otherwise, meeting eligibility requirements, the Secretary of the Navy authorized Petitioner transfer to the Retired List of the Regular Navy/Navy Reserve. Per MILPERSMAN 1820-010, Petitioner was transferred to the Retired List effective 1 December 2006.

j. On 13 May 2020, Petitioner turned 62.

k. On 28 April 2023, State of [REDACTED] Department of Corrections notified To Whom It May Concern that Petitioner was employed with [REDACTED] Department of Corrections ([REDACTED] Correctional Facility and [REDACTED] Correctional Facility) from 28 May 1996 to 1 February 1999 as a Correctional Officer I. Furthermore, Petitioner's employer was listed on the Operation [REDACTED] Employer Database.

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 although Petitioner did not follow the administrative procedures, there is no evidence that the service provided him a copy of DD Form 2676 or explained the reporting requirements and procedures for enhanced retirement credit as described in accordance with reference (c). However, the Board determined that Petitioner did complete qualifying periods of employment during the enhanced retirement qualification period and the Department of Corrections for the state of [REDACTED] is listed on the registry of [REDACTED] organizations. Therefore, Petitioner is eligible to have his retired pay recalculated.

RECOMMENDATION

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

Petitioner requested PACS registration and it was approved prior to effective date of early retirement under TERA on 1 January 1995.

Petitioner became employed under the conditions specified in subsection 3.1 (DODI 1340.19), 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: Navy Personnel Command will provide DFAS with the date that Petitioner would have reached 20 years of service. DFAS will complete an audit of Petitioner's records to determine time credited for the period of 28 May 1996 until Petitioner would have reached 20 years of

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
[REDACTED] (RET)

service, and re-compute military retired pay and the SBP base amount. Furthermore, DFAS will complete an audit of Petitioner's records to determine if Petitioner is due any back pay and allowances.

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.

5/9/2023

[REDACTED]

Deputy Director

[REDACTED]