



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

██████████
Docket No. 5221-23
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) BUPERSINST 1001.39F, 17 Sep 07

Encl: (1) DD Form 149 w/attachments
(2) Advisory opinion by NPC PERS-91, 27 Sep 23
(3) 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's Statement of Service for Navy Reserve Retirement to reflect 20 years and 6 months of qualifying service and pay 100 percent of retirement.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 5 October 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. On 16 April 1968, Petitioner enlisted in the U.S. Naval Reserve for 6 years with an expiration of obligated service of 15 April 1974 and entered active duty on 19 August 1968 for 4 years with an end of active obligated service of 18 August 1972. Petitioner was released from active duty with an honorable character of service and was issued an Armed Forces of the United States Report of Transfer or Discharge (DD Form 214N) for the period of 19 August 1968 to 18 September 1972 upon completion of required active service.

b. On 14 April 1976, Petitioner married ██████████.

c. On 16 January 1979, Petitioner was advanced to CE1/E-6.

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d. On 22 November 1988, Commanding Officer, Naval Reserve Personnel Center notified Petitioner that he had now completed all requirements for and he was eligible to receive retired pay upon reaching age 60. This basic eligibility may not be denied or revoked unless it resulted directly from fraud or misrepresentation on Petitioner's part. The number of years of creditable service and the amount of retired pay however may be adjusted for errors. Enclosed is the Statement of Qualifying Service used to document Petitioner's initial eligibility. A complete Statement of Qualifying Service will be provided on retirement or discharge. Petitioner was also entitled to participate in the Reserve Component Survivor Benefit Plan (RC-SBP). RCSBP Information Brochure/Election Certificate provided pertinent information. Petitioner's completed Election Certificate must have been submitted to Naval Reserve Personnel Center (Code 41) within 90 days of receipt of this letter. Petitioner's election was IRREVOCABLE except upon certain changes in dependent status. Any prior elections he had submitted were invalid.

e. On 18 January 1989, Commanding Officer, Naval Reserve Personnel Center notified Petitioner via Officer in Charge, [REDACTED] that his request to be transferred to the retired Reserve has been approved. Petitioner was transferred to the retired Reserve in accordance with Title 10, U.S.C. sections 1376(a) and 274 effective 1 February 1989 as a Construction Electrician First Class but without pay or allowances authorized by Title 10, U.S.C. Chapter 67.

f. On 19 December 1991, Judge of the Superior Court of [REDACTED] signed a Judgement of Dissolution of Marriage. Effective 1 January 1992, Petitioner and spouse were divorced. Divorce decree does not direct spousal support and Petitioner was awarded all right, title, and interest in his Navy Reserve retirement benefits. No SBP was awarded for former spouse.

g. On 28 February 2008, Petitioner turned 60.¹

h. On 12 April 2022, Commander, Navy Personnel Command (PERS-9) notified Petitioner that per 10. U.S.C. section 12731(a) the Secretary of the Navy approved his application for retired pay for non-regular service. Petitioner's initial date of eligibility for retired pay is 28 February 2008. Per Petitioner's request, authorization to retired pay was effective 28 February 2008. Per 10. U.S.C. section 12732 and 10. U.S.C. section 12733, computation of Petitioner's retired pay under 10. U.S.C. section 12739 was based on 20 years 1-month of qualifying service, 2,683 retirement points and a pay entry base date of 16 April 1968.

i. On 12 April 2022, Petitioner was issued a Statement of Service for Navy Reserve Retirement listing qualifying years of service: 20 years, and 1-month, total retirement points creditable for pay: 2,683, and date eligible for notification of eligibility for retired pay: 18 September 1988.

¹ Reference (b), individuals are responsible for making application to receive retired pay. It is not an automatic process, however applications are provided in advance of the 60th birthday. NAVPERSCOM (PERS-912) sends a notification package to eligible personnel approximately 6 months prior to their 60th birthday. If an individual does not receive the notification within 4 months prior to turning age 60, the member should either contact NAVPERSCOM at 1-877-807-8199 and request the notification package or go to www.npc.navy.mil/CareerInfo/ReservePersonnelManagement and find the forms for download.

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j. On 1 December 2022, the Defense Finance and Accounting Service (DFAS) notified Petitioner that this letter responds to his claim for retired pay and Petitioner's claim is denied in part. The Barring Act, 31 U.S.C. § 3702, bars payment of any portion of a claim that accrued more than six (6) years prior to receipt of the claim by DFAS. The claim for retired pay accrued from Petitioner's military retired pay date, February 28, 2008. Petitioner's claim was received by DFAS on March 31, 2022. Because more than six years passed before DFAS received the claim for retired pay, payment in the amount \$63,288.13 for the time period February 28, 2008 through March 31, 2016 was denied.

k. On 23 January 2023, Office of the Assistant Secretary (Financial Management and Comptroller) this letter is in response to Petitioner's request for a waiver of the Barring Act that was received on December 15, 2022. DFAS can process Petitioner's claim but the law limits waived claims to 525,000. DFAS recommended that Petitioner submit his claim to this Board, due to the specific parameters of Petitioner's claim and because there are limitations to what the Barring Act process will allow in terms of recovery, he would be more likely to recover the full amount of his claim via submission to this Board.

l. On 21 September 2023, Petitioner was issued a Statement of Service for Navy Reserve retirement listing qualifying years of service: 20 years, 9 months, and 15 days, total retirement points creditable for pay: 2,674, and date eligible for notification of eligibility for retired pay: 15 April 1988.

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 turned 60 on [REDACTED] and became eligible to receive retired pay, however PERS-912 did not receive Petitioner's request for pay until 31 March 2022 per enclosure (2). This resulted in Petitioner only receiving 6 years of back pay due to the Barring Act. The Board determined that although Petitioner did not submit his request for retired pay in a timely manner, he did earn retired pay and he should receive said pay. Additionally, Petitioner's anniversary year was initially incorrectly established as 19 September 1972. Once his anniversary year was corrected, Petitioner's qualifying years increased to 20 years, 9 months, and 15 days. Furthermore, the adjustment resulted in a decrease of creditable retirement points from 2,683 to 2,674. The Board agreed with enclosure (2) that Petitioner should be credited with 2,683 retirement points.

RECOMMENDATION

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

Petitioner was issued a Statement of Service for Navy Reserve Retirement listing qualifying years of service: 20 years, 9 months, and 15 days and total retirement points creditable for pay: 2,683.

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Petitioner submitted a request for retired pay at age 60 prior to [REDACTED] (60th birthday) and was approved by cognizant authority.

Note: That any other entries affected by the Board's recommendation be corrected. DFAS will complete an audit of Petitioner's records to determine if Petitioner is due any back pay.

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

10/12/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]