



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

█
Docket No. 5751-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, USN,
XXX-XX-█

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214, 24 Mar 23
(3) █ ltr, 27 Jun 23
(4) Advisory opinion by NPC PERS-8, 14 Sep 23

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting reinstatement on active duty effective 24 March 2023.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 3 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 records, 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, found that, before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. On 24 March 2023, Petitioner was discharged from the Navy after 18 years, six months, and 29 days of active service upon completion of active service. Enclosure (2).

b. On 27 June 2023, in a congressional response by the Commander, █, █, the Commander notified a Senator that Petitioner was improperly separated due to physical fitness assessment (PFA) failures, thus the Board was the appropriate agency for corrective action. Enclosure (3).

c. In his application, Petitioner claims he was told he would not receive a DD Form 214 if he did not file a separation request. Petitioner also claims that he was not medically fit for separation. Petitioner contends that according to 10 U.S.C. section 1176, "A regular enlisted

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member whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for transfer to the Fleet reserve, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve unless the member is sooner retired or discharged under any other provision of law.” Enclosure (1).

d. The advisory opinion (AO) furnished by the Assistant Commander, Navy Personnel Command (PERS-8) noted that after over 18 years of active duty service, Petitioner should have been protected by 10 U.S.C. section 1176. The AO also noted that the command based their decision on NAVADMIN 304/17 which halted administrative separations for PFA failures but specified that enlisted members who failed two or more consecutive PFAs will continue service until their end of active service and will be ineligible to reenlist or extend. The NAVADMIN was superseded by NAVADMIN 42/23 which announced that sailors shall be counted as having zero past PFA failures prior to 16 February 2023 “when considering authority to reenlist, advance, promote . . .” the AO determined that Petitioner should have been immediately allowed to reenlist on or after 16 February 2023, if that was his desire. Regardless, both NAVADMINS were superseded by 10 U.S.C. section 1176. Enclosure (4).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting corrective action.

The Board determined that Petitioner’s contention has merit and substantially concurred with the AO that Petitioner was improperly separated. In this regard, the Board noted that when discharged, Petitioner had more than 18 years of active service and was within 18 months of being qualified for transfer to the Fleet Reserve. Pursuant to 10 U.S.C. section 1176, a member within two years of qualifying for transfer to the Fleet Reserve, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve. Accordingly, the Board concluded that restoration to active service is warranted until Petitioner is qualified for transfer to the Fleet Reserve.

RECOMMENDATION

In view of the above, the Board directs the following corrective action:

Petitioner’s naval record be corrected to reflect that he was not separated, but had continuous active service and credit for that service from date of separation until restored to active duty. Petitioner’s naval record be corrected by removing any documents or entries reflecting that he was separated on 24 March 2023.

Petitioner’s naval record be corrected by reinstating him to active service within 45 days of the date of this letter. Petitioner’s naval record be corrected to reflect that his contract was extended until he reaches 20 years of service sufficient for retirement/transfer to the Fleet Reserve.

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Note: If Petitioner does not enter active duty within 45 days of this letter no further action will be taken in his case.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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.

10/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]