



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6695-98
16 April 1999

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 28 Jul 98 w/attachment
(2) NPC-823 memo dtd 4 Mar 99
(3) Subject's ltr dtd 25 Mar 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by granting him two more days of service, so that he will have a total of 24 years, rather than 23 years, 11 months and 28 days.

2. The Board, consisting of Messrs. Swarens and Zsalman and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 8 April 1999 and completed deliberations on 16 April 1999. Pursuant to its regulations, the Board 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, 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, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner transferred to the Fleet Reserve on 30 November 1997, after having served a total of 23 years, 11 months, and 28 days. Had he remained on active duty for an additional two days, he would have received a 24-year longevity pay raise, and his retainer pay as a member of the Fleet Reserve would have been increased as well. He had the additional time on his enlistment contract to allow him to serve the additional two days.

d. In his application at enclosure (1), Petitioner alleged that he was not counseled he was two days short of 24 years on the date he left active duty. He stated that he discovered this on 15 December 1997. His Department of Defense (DD) Form 214, certificate of release or discharge from active duty (last document at enclosure (1)), which he signed before transferring to the Fleet Reserve, shows that he had nine years and eight months of net active service in the current period; 12 years, four months and 12 days of prior active service; and one year, 11 months and 16 days of prior inactive service. While the DD Form 214 does not expressly reflect the total, it comes to 23 years, 11 months, and 28 days of service. Each month, all active duty service members receive a leave and earnings statement (LES) which shows their pay entry base date (PEBD). Petitioner had a PEBD of 3 December 1973.

e. In correspondence attached as enclosure (2), the Navy Personnel Command Enlisted Retirements Branch (NPC-823) has commented to the effect that Petitioner's request should be denied. This advisory opinion states in pertinent part as follows:

...

2. Review of the master enlisted service record indicates that [Petitioner's] computation of active and inactive service was correctly computed and that based on his request, he was transferred to the Fleet Reserve on 30 November 1997. His final authorization and statement of service was forwarded via naval message on 3 July 1996 to his final duty station...

f. By letter at enclosure (3), Petitioner replied to the advisory opinion from NPC-823. In this letter, he alleged that he had been advised by his Personnel Support Detachment (PSD) that if he transferred to the Fleet Reserve on 30 November 1997, this would put him "over 24 years day for day." He said "I was acting on their computation being accurate and the PSD LCPO [leading chief petty officer] even checked my records and said that date would be perfect." He stated he did not believe anyone with his length of service "would purposely transfer to the Fleet Reserve 2 days shy of 24 years."

CONCLUSION:

Upon review and consideration of all the evidence of record, and despite the recommendation in enclosure (2), the Board finds an injustice warranting the requested relief.

The Board accepts Petitioner's assertion that he was misinformed he would have 24 years of service when he transferred to the Fleet Reserve on 30 November 1997. They agree with him that since he had enough time on his enlistment contract, it would have been illogical for him not to serve the additional two days needed to receive his 24-year longevity pay raise. They recognize he could have discovered, before transferring to the Fleet Reserve, that he would be days short of 24 years of service on 30 November 1997. However, they feel it is in the interest of justice to excuse his reliance on the erroneous advice he received.

In view of the foregoing, the Board recommends the following corrective action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he transferred to the Fleet Reserve on 2 December 1997 rather than 30 November 1997.
 - b. That any material or entries inconsistent with 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.
 - c. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.
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.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
 JONATHAN S. RUSKIN
 Acting Recorder

- 5. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
 W. DEAN PFEIFFER

Reviewed and approved: JUN 17 1999

Karen S. Heath

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

6095-98



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1830
Pers823
Ser 299
4 Mar 1999

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: COMMENTS AND RECOMMENDATIONS ICO EX-ADG [REDACTED]
USN [REDACTED]

Ref: (a) Pers-00XCB ltr of 04 Jan 1999

Encl: (1) BCNR File with Microfiche Service Record

1. Reference (a) requested comments and recommendations in subject member's case. Specifically, Petitioner requests to adjust his Fleet Reserve date adjusted to attain 24 years vice 23 years, 11 months, 28 days for pay purposes.
2. Review of the master enlisted service record indicates that [REDACTED] mputation of active and inactive service was correctly computed, and that based on his request, he was transferred to the Fleet Reserve on 30 November 1997. His final authorization and statement of service was forwarded via naval message on 3 July 1996 to his final duty station.
3. In view of above, it has been determined that no error or injustice has occurred in this case. Enclosure (1) is returned.

[REDACTED SIGNATURE]
Head, Enlisted Retirements Branch