



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

[REDACTED]
Docket No. 6729-16
DEC 19 2017

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

Subj: REVIEW OF NAVAL RECORD ICO FMR MBR [REDACTED]
[REDACTED] USMC

Ref: (a) Title 10 U.S.C. §1552

Encl: (1) DD Form 149 of 1 Aug 16
(2) NAVMC 118(3)
(3) 1st Endorsement PCS Orders ltr RCW/tef 1326 of 19 Jul 74
(4) DD Form 214 eff 24 Jul 74
(5) HQMC memo 7200 RFF of 28 Nov 16

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that the applicable naval record be corrected to show reinstatement of accrual leave.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 October 2017 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, finds as follows:

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

b. On 19 July 1974, the Petitioner transferred from Headquarters Company, [REDACTED] Marine Division in route to Headquarters Company, Marine Corps Base [REDACTED] for separation from military service. See enclosure (2)

c. On 19 July 1974, the Petitioner received first endorsement of Permanent Change of Station Orders. The Petitioner had been listed with an accrued leave balance of 13 days. See enclosure (3).

d. On 24 July 1974, the Petitioner was separated from active duty service. The Petitioner's Report of Separation from Active Duty (DD Form 214) states that days for accrued leave paid were listed as "Due: Not Settled." See enclosure (4).

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e. On 26 November 2016, Headquarters, U.S. Marine Corps (HQMC) provided an unfavorable Advisory Opinion (AO) regarding the Petitioner's claim to receive reinstatement of unsold leave upon separation from the U.S. Marine Corps. The AO states that the Petitioner's military record did not provide evidence to support his claim that accrued leave was never settled. Moreover, the Petitioner's pay/leave record and Leave and Earning Statements (LES) for the contended period were missing from the Petitioner's military record and/or the documents were never provided by the Petitioner. See enclosure (5).

CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the opinion expressed in enclosure (5), the Board finds the existence of an error or injustice warranting corrective action. Although the Petitioner did not provide specific proof via documentation of pay/leave record, LES and/or final settlement, the Petitioner's PCS endorsement and Report of Separation from Active Duty provide evidence that the Petitioner should have been reinstated accrued leave of 13 days. The Board concluded that the Petitioner was in a better position than HQMC to show that accrued leave was never settled prior to separation from the Marine Corps. Due to these findings, relief should be granted.

RECOMMENDATION

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

Reinstatement of 13.0 days be reflected in the Petitioner's leave account. Note: this change will entitle the Petitioner to a Lump-Sum Payment for Accrued Leave of 13.0 days.

A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.

[REDACTED]
Recorder

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

[REDACTED]
Executive Director

Reviewed and ~~Approved~~/Disapprove
[REDACTED]