



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

[REDACTED]
Docket No. 1551-16
FEB 27 2017

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

Subj: REVIEW NAVAL RECORD OF FORMER [REDACTED] USN,
[REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) MCM, Part V, para. 6d

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

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) with this Board requesting his rank and Time in Rate (TIR) be restored.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 January 2017, and pursuant to its regulations, determined that the partial 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, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
4. Petitioner enlisted in the Navy and began a period of active duty on 25 October 2000. On 4 February 2013, he received non-judicial punishment (NJP) for two specifications of violating Article 92 of the Uniformed Code of Military Justice (UCMJ) for failure to obey a lawful order. On 8 February 2013, he submitted a request to the Commander, [REDACTED] (Commander) to appeal his NJP. On 28 March 2013, the Commander granted a set aside of his NJP. On 3 April 2013, the Commander's administrative office (N1) submitted the set aside authority to Navy Personnel Command (NPC), Office of Legal Counsel (PERS-00J). On 8 April 2013, PERS-00J stated it was a procedural requirement that a NJP set aside be endorsed by the first flag officer in the chain of command before it could be approved. There is no evidence of any action being taken on [REDACTED] set aside approval before he was discharged. As a result he was discharged at the end of his active obligated service on 8 October 2014. On 5 December 2016, BUPERS-00J stated their office never received the set aside from his command. Subsequently, on 12 December 2016, NPC corrected the Petitioner's naval record by removing

the original evaluation report with an end date of 4 February 2013. Finally, on 31 January 2017, NPC issued a DD Form 215 correcting blocks 4a, 4b, 12i, and 27.

CONCLUSION:

The Board concluded that the Petitioner did provide proof that his discharge on October 8, 2014 at the rank of E-5 was indeed an error or an injustice, and that his request should be approved. The Board concluded that his rank of E-6 should have been restored dating back to 2013 in accordance with the regulations, and he should receive any back pay owed. The Board concludes that the Petitioner's request warrants favorable relief.

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

RECOMMENDATION:

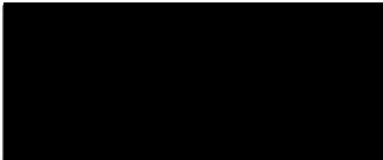
a. Defense Finance & Accounting Service (DFAS) will complete an audit of Petitioner's records to determine if Petitioner is due any back pay and allowances.

b. That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.


Recorder

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 Regulation, 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.


Executive Director