



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

█
Docket No: 10303-19
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018
(c) MILPERSMAN 1910-164

Encl: (1) DD Form 149 with attachments
(2) Navy Standard Integrated Personnel System Contract Detail
(3) CNP Memo, Ser 00/056, subj: Best Interest of the Service Separation Request in the case of [Petitioner], 6 May 16
(4) █ Memo, Ser 00/1789, subj: Separation by Reason of Best Interest of the Service (BIOTS) ICO [Petitioner], 29 Sep 15
(5) Administrative Separation Board Findings/Recommendations Worksheet
(6) Consulate General of the United States of America Letter, dtd 24 Mar 14
(7) █ Memo, Ser N00/392, subj: Recommendation for Administrative Separation ICO [Petitioner], 22 Apr 14
(8) NAVPERS 1910/32, Administrative Separation Processing Notification Procedure, dtd 7 Aug 14
(9) Petitioner Memo, subj: Separation by Reason of Best Interest of the Service (BIOTS) ICO [Petitioner], 10 Oct 14
(10) Petitioner Memo, subj: Separation by Reason of Best Interest of the Service (BIOTS) ICO [Petitioner], 8 Feb 16
(11) NPC PERS-9 Action Memo, subj: Best Interest of the Service Separation Request in the Case of [Petitioner], 23 Mar 16
(12) BUPERS Msg, subj: Admin Disch ICO [Petitioner], dtg 221402Z Jul 16
(13) NPC Statement of Service for Navy Reserve Retirement Worksheet

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 discharge be vacated and that he be reinstated in the Naval Reserve (USNR) at his previously held grade of E-6. Alternatively, Petitioner requests that his characterization of service be upgraded to "Honorable"; that his reenry code be changed to "RE-R1"; and that he be allowed to immediately reenlist in the USNR.

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2. The Board reviewed Petitioner's allegations of error or injustice on 19 February 2021 and, pursuant to its regulations, determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include reference (b).

3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

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

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review Petitioner's application on its merits.

c. Petitioner initially enlisted in the Naval Reserve (USNR) on 31 January 2001. His most recent reenlistment was on 16 November 2012. See enclosure (2).

d. In December 1987, Petitioner, under his former name, applied for a delayed registration of birth from the State of [REDACTED]. He received this delayed registration of birth from the State of [REDACTED] on [REDACTED] with a date of birth of [REDACTED]. See enclosure (3).

e. During an initial passport application screening in 1988, the U.S. Department of State (DOS) determined that Petitioner's delayed registration of birth was fraudulent and denied his passport application. See enclosure (3).

f. On 13 August 1990, Petitioner legally changed his name to that reflected in the subject line. He reapplied for and received a U.S. passport under this name. See enclosure (3).

g. During the passport renewal process in 2012, DOS ([REDACTED]) received a fraud alert that Petitioner's U.S. passport information was fraudulent. Specifically, the alert identified that his Delayed Registration of Birth Certificate was fraudulent. See enclosure (3).

h. A subsequent investigation by the DOS, with assistance from the Naval Criminal Investigative Service, substantiated that Petitioner made a false claim of U.S. citizenship. Specifically, no record or social security number existed for any person that Petitioner had claimed as his father, and no person could be found fitting the description that Petitioner provided for his mother. Petitioner allegedly admitted that the individuals listed on his birth certificate as his aunt and cousin were not related to him. Additionally, a review of church records reflected that Petitioner was not baptized at the church that he had claimed on his application for delayed registration of birth. On 25 March 2013, the U.S. DOS closed the investigating, stating "the findings in this case indicate the individual claiming to be [Petitioner], and claiming to be a [REDACTED] born U.S. citizen, has not sufficiently proven his identity to obtain a current, valid U.S. passport." See enclosure (3).

i. On 12 August 2013, Petitioner was notified of administrative separation proceedings for separation by reason of defective enlistments and indication – fraudulent entry into naval service.¹ See enclosure (4).

j. On 15 January 2014, an administrative separation board unanimously determined that the preponderance of the evidence did not support the reason for separation, and recommended that Petitioner be retained in the USNR. See enclosure (5).

k. By letter dated 24 March 2014, the DOS notified Petitioner that “[t]he evidence [he] presented is not sufficient to establish [his] claim to U.S. citizenship. Therefore, a U.S. passport cannot be issued ... at this time and [his] application is denied.” See enclosure (6).

l. By memorandum dated 22 April 2014, Petitioner’s commander recommended to the Commander, Naval Personnel Command (NPC) (PERS-913) that Petitioner be discharged from the USNR contrary the recommendation of the administrative separation board. The commander stated his belief that the administrative separation board did not understand the nuances of the basis for separation, and that the overwhelming weight of the evidence was not recognized by the board. See enclosure (7).

m. On or about 7 May 2014, PERS-913 recommended that Petitioner’s case be processed for separation in the Best Interests of the Service (BIOTS) in accordance with reference (c), as his case did not meet any other separation criteria and it was the most appropriate reason for separation processing. See enclosure (4).

n. On or about 7 August 2014, Petitioner was notified that he was being processed for administrative separation by reason of BIOTS, in accordance with reference (c), due to his enlistment with a fraudulent birth certificate. See enclosure (8).

o. By memorandum dated 10 October 2014, Petitioner submitted a response to the notification of BIOTS separation for the Secretary of the Navy. In this response, Petitioner commented that his notification did not inform him of the specific circumstances, acts, or omissions alleged; why separation is in the BIOTS; and why no other reason for separation is considered appropriate, as required by reference (c). Petitioner also referenced the unanimous determination of the administrative separation board that the allegation of fraudulent enlistment was not supported by the preponderance of the evidence and that he should be retained in the USNR, and that there is no evidence that his birth certificate was fraudulent or fraudulently obtained. He also asserted that there was no evidence that he was not a citizen of the United States. See enclosure (9).

¹ Petitioner’s naval record is incomplete in that it does not include documentation of the initiation of Petitioner’s administrative separation for fraudulent enlistment. The information contained herein regarding this procedural matter is taken from the records pertaining to the initiation of Petitioner’s separation in the Best Interest of the Service (BIOTS). The presumption of regularity applies, and is supported by the evidence in the record of Petitioner’s subsequent favorable administrative separation board results.

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p. By memorandum dated 29 September 2015, Petitioner's commander made an addendum to the 7 August 2014 notification, specifically informing Petitioner specific circumstances, acts, or omissions alleged, why the separation in in the BIOTS, and why no other reason for separation is considered appropriate. Petitioner was provided 30 days to respond to this addendum.² See enclosure (4).

q. By memorandum dated 8 February 2016, Petitioner responded to the addendum to his notification of BIOTS separation processing. In this response, he again emphasized the unanimous finding and recommendation of the administrative separation board, suggesting that this indicated that his separation would not actually be in the BIOTS. He also noted the unfair delay in processing his case, and provided evidence of his continued superior performance. See enclosure (10).

r. By memorandum dated 23 March 2016, the Assistant Commander, NPC for Reserve Personnel Management (PERS-9), forwarded the recommendation for Petitioner separation for BIOTS to the Chief of Naval Personnel, recommending that he forward it to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)). See enclosure (11).

s. By memorandum dated 6 May 16, the CNP forwarded Petitioner's separation for BIOTS action to the ASN (M&RA), recommending that Petitioner be separated from the USNR with a general (under honorable conditions) characterization of service for BIOTS. See enclosure (3).

t. On 11 July 2016, the acting ASN (M&RA) approved Petitioner's separation from the USNR for BIOTS with a general (under honorable conditions) characterization of service. See enclosure (3). This decision was executed by message dated 22 July 2016, which directed that a NAVPERS 1070/613 (Service Record Page 13) be used in lieu of the NAVPERS 1070/615 (Record of Discharge), and that Petitioner's reentry code be recorded as "RE-4." See enclosure (12).

u. Petitioner was discharged from the USNR on 24 July 2016.³ See enclosure (13).

v. Petitioner contends that his BIOTS discharge was in error or unjust because it was based upon the same facts that the administrative separation board had unanimously determined to be insufficient to support the allegation of fraudulent enlistment; that the decision to separate him for BIOTS was not supported by the "overwhelming weight of the evidence," as claimed by his commander and as required by Naval regulations; that the characterization of service and discharge codes were not supported by his service record; that the BIOTS discharge procedure violated Petitioner's substantive due process rights under the Constitution; that the discharge constituted an abuse of discretion; and that the BIOTS discharge was arbitrary and capricious. See enclosure (1).

² Enclosure (10) reflects that Petitioner did not receive enclosure (4) until 14 January 2016.

³ Petitioner's naval record is incomplete in that it does not include the NAVPERS 1070/613 in lieu of the NAVPERS 1070/615 directed by the discharge authority, but his discharge date is confirmed by enclosure (13).

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MAJORITY CONCLUSION:

After careful review and consideration of all of the evidence of record, the Majority of the Board determined that the partial relief indicated below was warranted in the interests of justice.

The Majority of the Board found no error or injustice in the decision to involuntarily separate Petitioner for the BIOTS in accordance with reference (b). While it is true that the administrative separation board unanimously determined that the basis for Petitioner's was not supported by the preponderance of the evidence, reference (b) provides an alternative basis to separate an individual under these precise circumstances when the command determines it to be in the BIOTS. All of the procedures for a BIOTS separation were followed, and contrary to Petitioner's assertions the basis for this decision was clearly established and supported by the evidence. Further, it is in the discretion of the ASN (M&RA) to direct the BIOTS separation of any member prior to the expiration of their term of service upon determining such action to be in the BIOTS. For this reason, the Majority found no merit in Petitioner's claim that he was denied substantive due process in this decision, nor in his claim that the decision of the acting ASN (M&RA) to approve his BIOTS discharge was an abuse of discretion or arbitrary and/or capricious. Petitioner received all process due to him under existing regulations, and the decision of the acting ASN (M&RA) to approve his BIOTS separation was based on sufficient evidence.

Although the Majority found no error or injustice in Petitioner's BIOTS separation, it nonetheless determined that Petitioner's characterization of service should be upgraded in the interests of justice. In accordance with reference (b), the Majority considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. In this regard, the Majority specifically noted that Petitioner served meritoriously in the USNR for over 15 years, as evidenced by his favorable performance evaluations, overall trait average, and the lack of any misconduct, poor performance or behavior, or negative counseling statement in his records. While the Majority agreed with the decision to separate Petitioner in the BIOTS given the evidence that he had fraudulently obtained the birth certificate that he used to enlist in the USNR, it also believed that Petitioner's long service to the nation warranted favorable consideration and relief in the interests of justice. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to fully honorable.

While the Majority exercised its equitable relief authority to recommend that Petitioner's characterization of service be upgraded, it did not believe that any further relief was warranted. Specifically, the Majority found insufficient evidence to support Petitioner's requested reinstatement in the USNR. As stated above, the Majority found his BIOTS separation to be proper and appropriate under the circumstances, so it did not find his reinstatement in the USNR to be appropriate. For the same reason, the Majority also did not believe that Petitioner's reentry code should be changed, or that he should be permitted to immediately reenlist in the USNR. If it was in the BIOTS to separate Petitioner from the USNR, it remains in the BIOTS to prevent his reenlistment.

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MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That a NAVPERS 1070/613 (Service Record Page 13) be filed in Petitioner's naval record, with a copy provided to Petitioner, indicating that his service was characterized as "Honorable."

That no further changes be made to Petitioner's naval record.

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

MINORITY CONCLUSION:

The Minority of the Board concurred with the Majority determination that there was no error or injustice in Petitioner's BIOTS separation. However, the Minority disagreed with the Majority determination that Petitioner's characterization of service should be upgraded in the interests of justice. In this regard, the Minority believed that the determination of the acting ASN (M&RA) to characterize Petitioner's service as "general (under honorable conditions)" was appropriate given the circumstances of his separation. While the Minority recognized Petitioner's otherwise meritorious service in the USNR, it believed that that service did not excuse the apparently fraudulent basis upon which Petitioner obtained his enlistment. Accordingly, the Minority determined that relief was not warranted under the totality of the circumstances.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on 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 titled matter.

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

3/15/2021

[REDACTED]

Executive Director

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ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER & RESERVE
AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Upgrade to Honorable)

MINORITY Recommendation Approved (Deny Relief)

Petitioner's Request Approved (Direct Reinstatement in the USNR in Previously Held Grade of E-6)

Petitioner's Alternative Request Approved (Upgrade to Honorable; Change Reentry Code to RE-R1)

JUN 08 2021

[REDACTED]
Acting ASN(M&RA)