



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

█
Docket No. 1094-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █

Ref: (a) Title 10 U.S.C. § 1552
(b) DODI 1312.03, 22 Nov 13
(c) OPNAVINST 1120.11A, 14 Jul 15
(d) DODI 1312.03, 28 Dec 18
(e) SECNAVINST 1000.7G, 23 Jan 19
(f) CNP memo 1120 Ser N1/021, 11 Apr 23

Encl: (1) DD Form 149 w/attachments
(2) Advisory opinion by █, 9 Mar 23
(3) Advisory opinion by █, 26 Sep 23
(4) Advisory opinion by █, 26 Jan 24
(5) Subject's naval record

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 naval record be corrected to show he was awarded additional 10 years of entry grade credit (EGC) for prior commissioned service in accordance with references (d) and (e).

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 21 March 2024 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 record, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Petitioner was released from active duty with an honorable character of service and was issued a Certificate of Release or Discharge from Active Duty (DD Form 214(s)) for the period of 7 May 2003 to 7 August 2003 upon completion of initial active-duty training; for the period of 29 January 2007 to 26 April 2007 due to commission or warrant in same branch of service; for the period of 27 April 2007 to 31 January 2016 due to Intradepartmental Transfer, and for the period of 1 April 2016 to 1 November 2016 upon completion of required active service.

b. On 12 May 2020, Petitioner signed a Request for Conditional Release (DD Form 368) from the USAF CT-ANG for inter-service transfer to the U.S. Navy, and it was approved by cognizant authority on 17 June 2021.

c. From Fall 2017 to Spring 2020, Petitioner earned 90 hours of credit from the University of [REDACTED]. Additionally, Petitioner was acknowledged for his work in voluntary student pro bono legal service providing a minimum of 80 hours of pro bono legal service and/or law-related community service prior to graduation.

d. On 10 July 2020, Petitioner notified Assistant Secretary of the Navy (Manpower and Reserve Affairs) via [REDACTED] that “I respectfully request 10 years of EGC for my prior active commissioned service in order to maintain my current grade of O-4 and to reappoint my date of rank, effective the day of my acceptance of appointment into the U.S. Navy Judge Advocate General Corps (JAGC). Failure to grant the requested credit will produce a gross inequity to this applicant, for the reasons set forth herein. OPNAVINST 1120.11A pertains.”

e. Petitioner was separated with an honorable character of service and was issued a Departments of the Army and the Air Force National Guard Bureau, Report of Separation and Record of Service (DD Form 22) for the period of 1 February 2016 to 9 August 2021 due to Appointment as Officer in another component of Armed Forces (Navy). Furthermore, block 10b (Prior reserve component service) lists 3 years, 9 months, and 14 days, and block 10c (Prior active federal service) lists 9 years, and 2 days.

f. On 10 August 2021, Petitioner signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the active U.S. Navy as a Lieutenant with a day of rank 1 August 2021 with a designator code of 2500 (Staff Corps Officer billet requiring Law specialty).

g. On 21 November 2022, Chief of Naval Personnel notified Petitioner that “[y]our request outlined in reference (a) for 10 years of EGC is disapproved. I have reviewed your request and recommendations provided from the JAG of the Navy in making my determination.

If you feel the manner in which Navy implemented the maximum allowable EGC in line with reference (b) resulted in a material error in your record, or an injustice, you may petition the Board for Correction of Naval Records.”

h. In the advisory opinions, attached as enclosures (2) through (4), the office having cognizance over the subject matter addressed in Petitioner’s application has commented to the effect that the request has merit and warrants partial favorable action. The advisory opinions generally state that Petitioner’s EGC was calculated incorrectly using reference (c), however none of them recommend that Petitioner be granted 10 years of EGC. It is accepted that reference (d) is the correct reference and several calculations for EGC were offered based on the various combinations of prior commissioned service and constructive service credit. Additionally, calculations were provided based on reference (f), which is the current guidance used to calculate EGC in accordance with reference (d). It is important to note that reference (f) was published nearly 3 years after Petitioner’s JAG Appointment.

i. Petitioner provided several rebuttals to the advisory opinions, disputing the application of the limitations permitted in reference (d). Further, that the advisories did not consider that his date of rank must be considered in light of DoDI 1312.03 which describes the policy of allocating service credit as an “equitable determination to establish an appropriate original appointment grade and date of rank relative to other officers in the same competitive category receiving an original appointment. Based upon the cursory denial of LT Petitioner’s waiver request, one can assume the Chief of Naval

Personnel (CNP) never considered LT Petitioner's O-4 date of rank indicating Petitioner's service credit was not equitably determined as required by DODI 1312.03". Petitioner "has fully explained, with evidence to prove, why he is deserving of the EGC waiver provided in the OPNAVINST. He served admirably for over 10 years as a commissioned officer on active duty prior to his appointment in the Navy's JAGC. By applying the waiver and correcting his records to reflect 10 years of EGC, this Board will meet the intent of the DODI of equitably determining EGC." Petitioner urged the Board to carefully consider his arguments and grant the full EGC to which he is entitled. Without a decisive decision in his favor, the CNP will continue to arbitrarily limit leading EGC requests thereby hindering the careers of all future service members seeking additional EGC.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) through (5), the Board finds the existence of an injustice warranting the following partial corrective action. The Board concluded that reference (e) does not apply in Petitioner's case. In accordance with reference (e), except for officers in the U.S. Public Health Service Commissioned Corps and Reserve officers not on active duty, an officer transferred in accordance with this instruction will continue to hold the same grade and date of rank held in the losing Service. Petitioner was a Reserve officer not on active duty. The Board further concluded that Petitioner's EGC was erroneously calculated based on reference (c). This reference awarded EGC based on reference (b). The reference in effect at the time of Petitioner's JAG appointment was reference (d). Although reference (c) was not updated, reference (f) was published more recently to implement the computing of EGC for JAGC.

Petitioner contends that he is entitled to 10 years of EGC, and that reference (d) provides that Petitioner "is entitled to full credit for his prior commissioned service. If, and only if, the Secretary of the Navy decides to limit this amount would he receive less than full credit for prior active commissioned service. There is absolutely no requirement that the amount of prior commissioned service credit be limited, as demonstrated by the permissive language of the provision." However, the Board determined that the Navy has consistently limited the amount of prior commissioned service awarded to new JAG appointees. Reference (b) allows prior commissioned service of one-year per each year of prior commissioned service, however reference (c) limited that to one-year for JAG appointments. Reference (d) allowed full credit for prior commissioned service, however it also permitted the Secretaries concerned to limit prior commissioned service awarded to half credit for service in an unrelated field. Although reference (f) was not published until after Petitioner's appointment, the Board determined that calculating his EGC in accordance with reference (f) is appropriate because it incorporates the more generous application of prior commissioned service found in provisions of reference (d), while applying the limitations permitted which are currently applied by the Navy. Therefore, the Board found reference (f) to be compliant with reference (d) but also consistent with the way the Navy awarded prior commissioned service in the past. Additionally, while Petitioner lists experience in the legal field to justify the additional EGC, the experience listed predated his law degree. Reference (d) states that creditable experience cannot predate the receipt of a degree or certificate and experience gained in a volunteer or student status will not be counted. Moreover, although Petitioner rejects the use of reference (c) to calculate his EGC, he asserts that he should be/should have been approved for a waiver to the 48-month EGC limitation detailed therein. As the Board understood it, reference (c) states that if he had been granted a waiver, he would have had to acknowledge in writing that, although he remained eligible and subjected to recall to active duty, he may not be permitted to transfer onto the active-duty list. Because Petitioner continued his

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career on the active-duty list, the Board determined that a retroactively applied waiver would be inappropriate in his case.

The Board determined that Petitioner is entitled to additional EGC calculated in accordance with reference (f) as follows: Petitioner has 10 years, 1-month, 13 days of prior commissioned service and will be awarded as such: EGC = prior commissioned service + constructive service credit.

prior commissioned service = 10 years, 1-month, 13 days X 50% = 5 years and 22 days – 2 years, 10 months, and 8 days constructive service credit = 2 years, 2 months, and 14 days prior commissioned service total.

constructive service credit = 3 years – 1-month and 22 days = 2 years, 10 months, and 8 days. Note: Petitioner completed 1-month and 22 days of prior active commissioned service during his law school studies. This time must be subtracted from the maximum allowed constructive service credit of 3 years.

EGC = 2 years, 2 months, and 14 days (prior commissioned service total) + 2 years, 10 months, and 8 days. constructive service credit = 5 years and 22 days.

RECOMMENDATION

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

Petitioner' EGC was "5 years and 22 days" vice "4 years" upon commissioning on 10 August 2021. Note: Navy Personnel Command will update Petitioner's date of rank and lineal number and determine Petitioner's advancement eligibility.

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

A copy of this Report of Proceedings will be filed in 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-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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

4/3/2024

