



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

█  
Docket No. 8111-23  
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,  
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Ref: (a) 10 U.S.C. §1552  
(b) BUPERSMAN 3850220.1z, 3 September 1974  
(c) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 with attachments  
(2) DD Form 4, Enlistment Contract – Armed Forces of the United States,  
20 February 1976  
(3) NAVCRUIT 111/70, Aviation Reserve Officer Candidate Service Agreement,  
20 February 1976  
(4) NAVPERS 1070/613, Administrative Remarks, 27 May 1977  
(5) NAVPERS 1070/613, Administrative Remarks, 4 December 1978

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, hereinafter referred to as the Board, requesting that his naval record be corrected to reflect that he had over two years of honorable service.<sup>1</sup>

2. The Board considered Petitioner's allegations of error or injustice on 27 November 2023 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below is warranted in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include reference (b).

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found 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 waive the statute of limitation and consider Petitioner's application on its merits.

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<sup>1</sup> It is not clear from his application what records in particular Petitioner wished to have corrected.

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c. On 20 February 1976, Petitioner enlisted in the U.S. Navy Reserve (USNR) and volunteered to participate in the Aviation Reserve Officer Candidate (AVROC) program. Per the terms of his AVROC Service Agreement, he would be required to complete his enlistment contract in the event that he failed to complete the requirements for appointment as a commissioned officer or was disenrolled from the AVROC program prior to completion. See enclosures (2) and (3).

d. On 27 May 1977, Petitioner was determined to be not physical qualified for the Naval Aviator program due to his poor eyesight but was found to be physically qualified for the Naval Flight Officer program. He indicated his desire to be retained in the AVROC Program as a Student Naval Flight Officer. See enclosure (4).

e. On 8 June 1977, Petitioner's designator was changed from Student Naval Aviator (1393) to Naval Flight Officer Candidate (1375). See enclosure (4).

f. On 4 December 1978, Petitioner was disenrolled from the AVROC program and discharged from the USNR for failure to meet his responsibility for keeping his commander informed of his status.<sup>2</sup> The authority for this discharge was cited as reference (c), the narrative reason for which was "Disenrolled from (Naval Academy/AOC/OCS/etc.). Not considered qualified for enlisted status," and he was assigned a reenlistment code of RE-1.<sup>3</sup> See enclosure (5).

g. Petitioner asserts that he was told in the summer of 1977 that his eyes would be retested when he returned for training in the summer of 1978, and that if he did not have 20/20 vision that he would be redesignated as a Naval Flight Officer. When a civilian optometrist informed him that his vision was 20/30 at best, he elected to not return during the summer of 1978. He believes that he received an honorable discharge certificate at one point, but cannot locate it. He believes that he is entitled to over two years of honorable service based upon his enlistment date of 20 February 1976. See enclosure (1).

h. At the time of Petitioner's service, Naval Reservists were issued a NAVPERS 1070/615 (Record of Discharge from the U.S. Navy Reserve (Inactive)) to document their discharge and characterization of service.

#### CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board concludes Petitioner's request warrants partial relief.

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<sup>2</sup> Petitioner's naval record does not provide details regarding the circumstances of his disenrollment from the AVROC Program or the specific status of which he failed to keep his commander informed. In enclosure (1), however, Petitioner claims that he elected not to return to training in the summer of 1978 after a civilian optometrist determined that his eyesight was no better than 20/30.

<sup>3</sup> According to reference (b), the reenlistment code normally assigned to a discharge for this reason was either RE-3K or RE-4.

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The Board found an error in Petitioner's naval record in that it does not reflect his time in service or the characterization of that service. Specifically, Petitioner's naval record does not include the NAVPERS 1070/615 which would document the circumstances and characterization of his discharge. Accordingly, the Board found that corrective action is warranted. However, the Board also found that the evidence does not support Petitioner's request for an honorable characterization of service. Specifically, Petitioner's own statement reflects that he failed to return to duty as required of his own volition based upon his belief that he would not be able to continue training as a Naval Aviator due to his eyesight, even after he signed a statement indicating his desire to be retained in the AVROC Program as a Naval Flight Officer Candidate. This constitutes misconduct sufficient to render Petitioner's service as less than fully honorable.

The Board also noted an administrative error in the reenlistment code reflected in enclosure (5). Specifically, enclosure (5) reflected that Petitioner was assigned a reenlistment code of "RE-1," but reference (b) provided that discharges for the reason stated in enclosure (5) warranted a reenlistment code of either "RE-3K" or "RE-4." Accordingly, the Board determined that Petitioner's naval record should be corrected to reflect the less stigmatizing of these two reenlistment codes.

#### RECOMMENDATION:

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

That Petitioner be issued a NAVPERS 1070/615 reflecting that he was discharged from the USNR on 4 December 1978 under honorable conditions, that he was issued a General discharge certificate, and that he was not recommended for reenlistment with a reenlistment code of "RE-3K." The authority for this discharge was "BUPERSMAN 3850220.1z," and the narrative reason for the separation was "Disenrolled from Officer Candidate School. Not considered qualified for enlisted status."

That the NAVPERS 1070/613 in Petitioner's naval record, dated 4 December 1978, be corrected to reflect that Petitioner was assigned a "RE-3K" reenlistment code.

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

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

#### EXECUTIVE DIRECTOR CONCLUSION:

Upon careful review and consideration of all of the evidence of record and the Board's conclusions and recommendations reflected above, it is my opinion that the Board's conclusion was arbitrary, capricious, and not supported by substantial evidence, and that its recommended corrective action is contrary to the Board's long-standing policy of not correcting a naval record in such a manner as to place the applicant in a worse position than that which he occupied before seeking relief from the Board. I noted these concerns upon my first review of the Board's decision on or about 15 December 2023, and returned the case to the Board for reconsideration.

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However, on 25 January 2024, the Board affirmed their conclusions and recommendation despite these concerns. Accordingly, I have determined that this decision warrants Secretarial review pursuant to paragraph 6(e)(2)(c) of enclosure (1) to reference (c).

There is no evidence in Petitioner's naval record suggesting that his service or discharge was characterized as anything other than fully honorable. To the contrary, the record reflects that he was assigned a favorable "RE-1" reenlistment code, suggesting that his command thought highly of Petitioner and would have welcomed his reenlistment despite the circumstances of his discharge, and Petitioner stated his belief that he had previously received an honorable discharge certificate. Accordingly, the Board's determination that Petitioner's naval record should be corrected to reflect that his service was characterized as "General (under honorable conditions)" was arbitrary, capricious and not supported by the evidence. It also would place Petitioner in a worse position than he currently occupies, as the ambiguity currently reflected in his naval record could reasonably support his claim to have served honorably.

Although I agree with the Board's conclusion that there is evidence in the record which would justify a less than fully honorable characterization of service, it is not the Board's function to assign the original characterization to a former member's service or discharge. Rather, the Board's function is to correct errors in, or remove injustices from, naval records. Absent any evidence whatsoever that Petitioner's service was not originally characterized as less than fully honorable, the Board's recommendation to correct his record to assign such a characterization risks creating the very type of error and/or injustice that the Board exists to correct. The more prudent and appropriate course of action in this case is to leave Petitioner's naval record as it is.

Finally, the Board's conclusion that Petitioner's reenlistment code should be changed from the favorable "RE-1" reflected in enclosure (5) to the adverse "RE-3K" corresponding to reference (b) is arbitrary, capricious, and not supported by the evidence. While the Board was correct that a discharge for the reason stated in enclosure (5) normally carried a reenlistment code of "RE-3K" or "RE-4" in accordance with reference (b), such a reenlistment code was not mandatory. Further, there is no basis to assume that the separation authority stated on enclosure (5) in 1978 was more reliable than the reenlistment code reflected on the same document. Finally, there is no question that correction of Petitioner's naval record to change his reenlistment code from "RE-1" to "RE-3K" would place him in a worse position than he currently occupies. This result would severely undermine the purpose of and faith in the Board's records review process. If, in fact, the "RE-1" reenlistment code on enclosure (5) was an administrative error, it is more appropriate to allow Navy Personnel Command (NPC) to make such a correction rather applying the authorities of this Board to essentially guess at the appropriate reenlistment code.

Although I agree that Petitioner's naval record should include the NAVPERS 1070/615 to document his discharge, and that Petitioner is entitled to such a record to document his service, such a record is more appropriately requested from and produced by NPC. The production of such a document by NPC would provide the Board with an actual record to review and correct if necessary, rather than creating a new record from scratch based upon the Board's arbitrary and capricious determination of the appropriate characterization of Petitioner's service. Accordingly, I strongly recommend that you disapprove the Board's recommendation and direct that no

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corrective action be taken on Petitioner's naval record, and that the Petitioner instead be invited to request documentation of his service from NPC.

EXECUTIVE DIRECTOR RECOMMENDATION:

In view of the above, I recommend 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.

3/5/2024

[REDACTED]

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[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

\_\_\_ Board Recommendation Approved (Partial Corrective Action – I concur with the Board’s conclusions and therefore direct the relief recommended by the Board above.)

X Executive Director Recommendation Approved (Deny Relief – I concur with the conclusions of the Executive Director, and therefore direct that no corrective action be taken on Petitioner’s naval record. NPC is free to correct any administrative errors that it may find in accordance with paragraph 5 of reference (c).)

\_\_\_ Petitioner’s Request Approved (Full Relief – I find an injustice in the fact that Petitioner’s service is not properly documented. However, I disagree with the Board’s conclusion that Petitioner’s service should be characterized as general (under honorable conditions), or that his reenlistment code should be changed to RE-3K, because these conclusions were not supported by the evidence. As such, I find that the only way to make Petitioner whole in the absent of documentation of his discharge is to provide him with the proper documentation reflecting that his service was characterized as honorable. Accordingly, I direct that Petitioner be issued a NAVPERS 1070/615 reflecting that he was honorably discharged from the USNR on 4 December 1978 and that he was recommended for reenlistment with a reenlistment code of “RE-1.” The authority for this discharge shall reflect the equivalent of what is now known as “Secretarial Authority.” Petitioner shall also be issued an Honorable Discharge Certificate.)

