



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

[REDACTED]
Docket No. 10704-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED] USNR RET,
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) BUPERSINST 1001.39
(c) Title 31 U.S.C. § 3702¹

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion by NPC (PERS-91), received on 29 Mar 24 (not dated)
(3) 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 reflect retroactive entitlement to non-regular retirement pay effective 7 January 2007 and receive the balance of \$63,546.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 9 May 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. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. On 17 February 1965, Petitioner entered the Naval Reserve and discharged on 16 February 1981. At the time of discharge, Petitioner earned 12 years of qualifying service for non-regular retirement.

b. On 20 August 1983, Petitioner enlisted in the Navy Reserve.

c. On 25 June 1991, Petitioner requested transfer to the Retired Reserve without pay effective 1 October 1991.

¹ Reference (c) specifies that claims involving uniformed service members' pay, allowances, travel and transportation, payments for unused accrued leave, retired pay, and survivor benefits must be received within 6 years from the date it accrues. Non-regular retired pay claims generally accrues from the member's sixtieth birthday.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED] USNR RET,
XXX-XX [REDACTED]

d. On 19 August 1991, Petitioner earned 20 years of qualifying service for non-regular retirement.

e. On 18 September 1991, Petitioner issued Notification of Eligibility to Receive Retired Pay at Age 60 and Participation in the Reserve Component Survivor Benefit Plan.

f. On 18 December 1991, Petitioner discharged from active duty recall in support of Operation Desert Shield/Storm and issued Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 20 August 1983 to 18 December 1991. The DD Form 214 specified: Block 18 (Remarks) Disability severance pay authorized in the amount of \$40,975.20 and paid; Block 23 (Type of Separation) Discharged; Block 26 (Separation Code) JFL; Block 27 (Reentry Code) RE-3P; and Block 28 (Narrative Reason for Separation) Physical Disability with Severance Pay.

g. On 18 February 2022, Petitioner issued Navy Reserve Non-Disability Retired Pay notification indicating initial eligibility for retired pay was 7 January 2007. However, “[s]ince you were previously separated from the Navy service, you will not be placed on the Navy Retired List, nor will you be considered a retired member of the Navy Reserve.”

h. On 23 January 2023, Senator Masto’s office was notified that the Defense Finance and Accounting Service (DFAS) received Petitioner’s retirement orders from the Navy on 11 April 2022 with an effective date of retirement on 7 January 2007. However, military retired pay from 7 January 2007 through 18 March 2015 was barred in accordance with reference (b).

i. On 1 February 2024, Petitioner issued DD Form 215 to DD Form 214 ending 18 December 1991. DD Form 215 reflects correction to Block 12a (Date Entered Active Duty this Period) “17 January 1991” vice “20 August 1983” and Block 12c (Net Active Service this Period) “00 11 02” vice “08 03 29.”

j. On 22 April 2024, the Defense Office of Hearings and Appeals issued response for Claims Case No. [REDACTED] allowing reimbursement of retired pay in the amount of \$25,000.00 by waiving the six-year statute of limitations and paying the maximum amount allowed by the statute. The response also indicated, Petitioner was entitled to receive retired pay upon application on his sixtieth birthday, 7 January 2007, however there was no record of Petitioner submitting for retired pay until March 2021.

k. In the advisory opinion, attached as enclosure (2), commented to the effect that the request has merit and warrants favorable action. Additionally, the advisory opinion indicates “PERS-91 has made the necessary corrections to [Petitioner’s] electronic record to correctly reflect him as “retired” vice “discharged former member” therefore entitling him to all Cost of Living increases from the effective date of retirement.”

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action. Petitioner met the eligibility criteria to transfer to the Retired Reserve without pay in accordance with

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET,
XXX-XX-[REDACTED]

reference (b),² but due to administrative errors by the Service, he was discharged with disability severance in the amount of \$40,975.20 vice released from active duty on 18 December 1991. The Board concluded Petitioner not being placed in a Retired Reserve without pay status, led to his delay or failure to submit the application for retired pay in a timely manner. Therefore, the Board determined that under these circumstances, partial relief is warranted.

RECOMMENDATION

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

Petitioner's DD Form 214 ending 18 December 1991 is amended to reflect: Block 23 (Type of Separation) "Released from Active Duty and Transferred to the Naval Reserve" vice "Discharged." Note: Navy Personnel Command is authorized to correct any other entries affected by the Board's recommendation and will issue a DD Form 215 or a new DD Form 214 whichever one they deem appropriate.

Petitioner transferred to the Retired Reserve without pay effective 1 January 1992.

Petitioner requested transfer to the Retired Reserve with pay effective 7 January 2007 in a timely manner and the request was approved by cognizant authority. Note: The DFAS will complete an audit of Petitioner's pay records to determine Petitioner's pay entitlements.

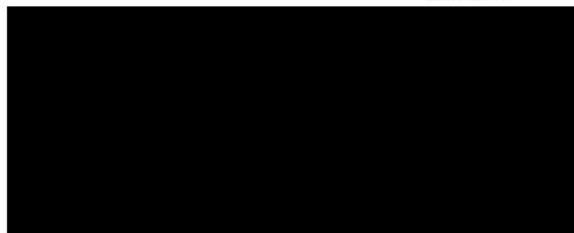
The part of Petitioner's request for corrective action that exceeds the foregoing is denied as the specific amount of pay entitlement will be determined by the DFAS.

That 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.

6/6/2024



² Reference (b), a members of the Naval Reserve may be transferred to the Retired Reserve without pay if he/she completes 20 years of qualifying service in any component of the armed forces and submits an application. Additionally, enlisted personnel who completed 20 years of qualifying service and served the last eight years of qualifying service as a member of the Reserve component were eligible upon application to received retired pay upon or after reaching age 60. However, retired pay benefits must be requested; the process is not automatic.