



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

DJC
Docket No. NR4265-14
17 Mar 15

[REDACTED]

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This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 March 2015. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In accordance with Commander, Navy Personnel Command message dated 28 May 2013, you were rated at 10% disabled, and were to be separated with disability severance pay. Furthermore, you were frocked to E4 prior to separation, discharged on 13 June 2013, and authorized disability severance pay in the amount of \$11,878.28, per DD Form 214 (Certificate of Release or Discharge from Active Duty/Evaluation report & Counseling Record). However, in accordance with your request, you were only paid \$10,724.40, after taxes. Nevertheless, DOD Financial Management Regulation, Volume 7A, Chapter 35, 350404 (26 U.S.C. 104/St. Clair v. U.S. 778 F. Supp 894), states the following: "Disability severance pay is normally taxable income. It is not subject to tax withholding or reporting, however, if at least one of the following three conditions exists: 1. On September 24, 1975, the individual was either a member of a Uniformed Service or was under a binding written commitment to become a member. 2. The entitlement resulted from combat-related injury or illness, as determined by the Secretary of the Military Service concerned (or designee), which happens as a result of any of the following activities: a. As a direct result of armed conflict. b. While actually performing extra-hazardous service, even if the service does not directly involve

combat. c. Under conditions simulating war, including maneuvers or training. d. By an instrumentality of war, such as weapons. 3. The member has official notification from the VA approving entitlement to disability compensation for the same illness or injury that caused the entitlement to disability severance pay." The Board found no evidence that you meet any of the above exceptions. Accordingly, your application and your request for a personal appearance before the Board have been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new evidence within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in this case. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,



ROBERT J. O'NEILL
Executive Director