



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

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Docket No. 3780-21
Ref: Signature Date

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Dear █ █

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 May 2022. The names and votes of the members of the panel will be furnished upon request. 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, relevant portions of your naval record and applicable statutes, regulations, and policies.

On 31 January 1984, you were honorably released from active duty when your request for extension of active duty was denied. Due to being involuntary separated, you received █ separation pay. On 2 March 1984, Commander, Naval Military Personnel Command notified your Ready Reserve Agreement on 11 February 1984 which had an indefinite expiration, was accepted. Furthermore, acceptance of your Ready Reserve Agreement does not preclude the application of administrative actions required by laws, regulations or policy. On 17 May 1996, Commanding Officer, Naval Reserve Personnel Center notified you that the Secretary of the Navy accepted your request to transfer to the Retired Reserve under Title 10 U.S. Code sections 10154 and 12774(a), and authorized your transfer to Retired Reserve status effective 1 May 1996. On 9 July 2014, you turned 60 and began to receive retired pay.

You requested reconsideration that the reversal of recoupment might be made under the Americans with Disabilities Act (ADA). The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. However, the Board concluded that the ADA is not relevant to your involuntary separation from active duty. You were paid separations pay and you went on to serve long enough to earn a non-

regular retirement. In accordance with 10 U.S.C. § 1174¹, recoupment of your separations pay is required when you became entitled to retired pay.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. 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,

5/27/2022

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Deputy Director
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¹ 10 U.S.C. § 1174 states that a member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received.