



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

█  
Docket No. 7476-22  
Ref: Signature Date

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Dear Petitioner:

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.

A three-member panel of the Board, sitting in executive session, considered your application on 9 February 2023. 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, as well as the 31 October 2022 Advisory Opinion (AO) provided to the Board by Navy Personnel Command (PERS 80) and the 4 November 2022 AO provided by the Office of Legal Counsel (BUPERS 00J), both of which you acknowledged receipt of on 9 November 2022.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request for the following relief: 1) "lawful" promotion to Lieutenant Commander and 2) temporary retraction of your retirement request and return to the Naval Reserve in order to be lawfully promoted and serve as a Lieutenant Commander. You further expressed your willingness to "accept the promotion from a retired status." You contend you were selected for promotion to Lieutenant Commander by the Fiscal Year 2023 (FY23) Reserve Lieutenant Commander Line Promotion Selection Board which convened 31 May 2022, while you were "actively serving in the Navy." You further contend that denial by Navy Personnel Command (PERS 912) of your request to be retained in the Naval Reserve until the age of 62 was based on your rank as a Lieutenant in the █ community, which you stated was over-manned by two. Further, you contend the promotion selection board results were not taken into consideration when a determination was being made on your retention beyond age 60

and the request “may have had a different outcome” if the retention panel knew of your selection for promotion to Lieutenant Commander. As part of your request for correction of your record, you also submitted a copy of the retention package, with enclosures, that you submitted to Navy Personnel Command (PERS 9).

The Board, however, substantially concurred with the AOs. Specifically, the Board noted your request to be retained until age 62 was partially approved but the retention panel, which considered your full career and service, only authorized retention in an active status of the Navy Reserve until 1 September 2022—just 51 days of active service past the age of 60. The Board further noted you were released from active duty on 31 May 2022 at the completion of your required active service. Additionally, the Board noted the Secretary of the Navy approved your request to transfer to the Retired Reserve, and you were transferred from the Reserve Active Status List (RASL) to the retired list on 12 July 2022. The Board also substantially concurred with the AO and specifically noted officers selected for promotion are not placed on a promotion list until the board report is approved by the President. Since the FY23 Reserve Lieutenant Commander Line board report was not approved until 7 September 2022, the Board determined you were not on a promotion list when discharged and transferred from the RASL to the retired list, and concurred with the AO the statutory requirement for your name to be administratively removed from the promotion list. Based on the available evidence, the Board concluded legal statutes and authorities do not support granting your requested relief.

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,

3/8/2023

A large black rectangular redaction box covering the signature of the Deputy Director.

Deputy Director

Signed by: 