



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. 8689-22
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your father's 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 16 March 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 father's naval record and applicable statutes, regulations, and policies.

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

On 28 November 1963 your father married █. On 19 November 1980 the Chief of Naval Personnel notified your father that having completed the required years of service he would be eligible for retired pay upon application at age 60 in accordance with the provisions of Title 10, U.S. Code, Chapter 67—eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation or administrative determination of years of creditable service performed unless it resulted directly from fraud or misrepresentation on your part. Notwithstanding the foregoing, the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination, and when such a correction is made you will be eligible for retired pay in accordance with the number of years of creditable service, as corrected, from the date retired pay is granted.

On 5 April 1989 the Commanding Officer, Naval Reserve Personnel Center notified your father that his request to be transferred to the Retired Reserve had been approved effective 1 April 1989.

In accordance with Title 10 (1998) chapter 1223 (Retired Pay for Non-Regular Service), a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—(1) is at least 60 years of age; (2) has performed at least 20 years of service computed under section 12732 of this title; (3) performed the last eight years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and (4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve. (b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Transportation, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

On 21 March 1998 your father turned 60 years old, and passed away on 27 May 2022—death certificate listed marital status: widowed.

You requested payment of your father's unclaimed pension, 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 although your father was eligible to receive retired pay beginning at age 60 in accordance with Title 10 (1998) chapter 1223, there is no record that he submitted a request to receive it. Furthermore, you have provided no explanation of why your father did not apply for Retired Pay Benefits, and it is possible that your father waived his entitlement to retired pay if he was entitled to compensation from the Veterans Administration. Without such information, the Board determined that a change to your father's record would be inappropriate.

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,

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Deputy Director
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