



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

■
Docket No. 8746-22
Ref: Signature Date



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 20 April 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. The Board also considered the 13 December 2022 advisory opinion (AO) from Commander, Navy Personnel Command Office of Legal Counsel. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that a 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.

A review of your record revealed that you served an enlistment in the Navy from 25 March 2002 to 29 March 2007, attaining the rate of Equipment Operator Second Class (E-5), at which time you accepted a commission as an ensign. You served as a commissioned officer from 30 March 2007 to 28 February 2018, at which time, due to your twice failure to select for O-4, you were required to be released from active duty. You then requested the opportunity to revert to enlisted status so you could continue your naval service, and your request was approved. Thereafter you commenced service as a Logistics Specialist on 1 March 2018 and you reach sufficient service for retirement and transferred to the Fleet Reserve effective 31 March 2022. You provided information that, after your transfer to the Fleet Reserve, you applied for benefits from the

Department of Veterans' Affairs (VA). The VA found that you had a 100% service connected disability rating effective 1 April 2022, which is the day after you transferred to the Fleet Reserve.

In your petition, you request that your record be corrected such that you are considered at the highest grade that you held satisfactorily which is Lieutenant (0-3E) vice E-6 for the purpose of calculating your retirement pay. You further request that, upon approval, you seek to have your retired pay be recomputed based on [10 USC] section 1407, paragraph (c)(1)(A). You also seek to be transferred to the disability retirement list based on your VA rated disabilities.

In order to assist it in reviewing your petition, the Board obtained the 13 December 2022 from a qualified professional in the law applicable to Navy personnel. The AO was considered unfavorable to your position. According to the conclusion of AO:

This petition should be denied. Petitioner has failed to rebut the presumption of regularity and provided insufficient evidence or legal basis that a material error or injustice occurred. The transfer to the Fleet Reserve as an E-6 at petitioner's request was properly effectuated. The Petitioner, although receiving a disability status from the VA some months after her transfer to the Fleet Reserve, did not receive a finding by the Navy that she was physically unfit for duty in the Fleet Reserve. There is no indication that petitioner contacted PERS 912 to report her concerns about her physical disability. Even if petitioner does report to PERS 912, there is no directive for the Navy to immediately recall petitioner to determine continued suitability for the Fleet Reserve. Even if petitioner was found unsuitable to remain in the Fleet Reserve and petitioner was placed on the retired list, petitioner will still have to wait for 30 total years of active duty, Fleet Reserve, and retired list time to be considered for advancement to the highest officer grade satisfactorily served. The advancement to highest officer grade is subject to review by the Secretary of the Navy to determine the highest grade the member served at satisfactorily when the petitioner reaches 30 years.

The Board carefully reviewed your petition and the material that you provided in support of your petition and it disagreed with your rationale for relief. In its review of your materials, the Board determined there was an insufficient basis to grant the relief you requested. Upon review of the AO, the Board determined that it provided a careful and thorough analysis of the issues at play and that it came to a rational and reasoned conclusion based upon the various laws and regulations, including the Financial Management Regulations, that governed your request. You were provided a copy of the AO and provided a thirty-day opportunity to provide a rebuttal to the findings of the AO, and no rebuttal was forthcoming. As a result of its review of the entirety of your record and petition, the Board substantially concurred with the findings of the AO and determined insufficient evidence of error or injustice exists with your approved retirement at the paygrade E-6. Finally, the Board was not persuaded by the VA ratings you provided as evidence of your unfitness for continued naval service at the time of your retirement since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be

demonstrated. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

5/4/2023

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Executive Director

Signed by: █