



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. 404-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 21 September 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. In addition, the Board considered the advisory opinion contained in Commander, Navy Personnel Command (PERS-44) memorandum 1070 PERS-4416 of 31 July 2023 and your response to the opinion.

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.

In accordance with DoDI 1312.03 published on 22 November 2013, the Secretaries of the Military Departments: Comply with the policies and procedures prescribed in this instruction. Administer the policies in this instruction. Issue written regulations to implement this instruction. Submit requests for entry grade adjustments for judge advocates to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) in accordance with paragraph 2c of Enclosure 3 of this instruction. Recommend policy changes, as necessary, to this instruction to the USD (P&R).

Entry Grade Credit. The entry grade and date of rank or promotion service credit in grade of a commissioned officer (other than health professions officers) will be determined by the

entry grade credit they are awarded when appointed. The entry grade credit that is awarded will be the sum of the prior commissioned service allowed and the amount of constructive service credit allowed. A period of time will be counted only once when calculating credit. Credit for prior service as a commissioned officer may not exceed 1 year for each year spent in Active duty commissioned service (except as a commissioned warrant officer), including periods of active duty for training.

Constructive Service Credit. The purpose of constructive service credit is to provide a commissioned officer in a professional field the grade and date of rank comparability relative to a contemporary who began commissioned service immediately after obtaining a bachelor's degree. These commissioned officers in a professional field began commissioned service after obtaining the additional education, training, or experience required for appointment, designation, or assignment in such professional field. Except as provided in paragraph 2b of this enclosure, the number of years creditable as constructive service credit is limited. For judge advocates: Entry grade for appointment, designation, or assignment must not exceed 3 years of credit.

In accordance with OPNAVINST 1120.11A dated 14 July 2015, Entry grade and date of rank upon appointment in the Judge Advocate General's Corps (JAGC) will be based upon prior active commissioned service, advanced education, training, and or special experience as indicated in the following table. (1). For Active Duty List (ADL) commissioned service in any of the uniformed services, refer to paragraph 11 and enclosure (2).

Paragraph 11. To obtain experienced former active duty commissioned officers who can compete for career status while maintaining uniform and stable management of the JAGC community, total entry grade credit granted, other than for officers accessed through the Law Education Program (LEP), will be limited to 48 months.

Enclosure (2). **Computation Rules.** Direct Appointment Selectee with Prior Commissioned Service (other than as a chief warrant officer or a participant in the LEP. **Computation of Constructive Service Credit:** A selectee who has previously served as an officer other than as a warrant officer or a participant in the LEP will be credited upon appointment in the JAGC with 3 years of constructive service credit for obtaining a Juris Doctor degree. **Computation of Prior Commissioned Service Credit:** For appointment in the JAGC, a selectee will be credited with 1 day of service credit for each day of active prior service as a commissioned officer performed in any uniformed Service up to a maximum of 1 year, plus 3 years of constructive service credit under subparagraph 2a. Entry grade credit (prior commissioned service credit plus constructive service credit) will total not less than 3 years and no more than 4 years.

You were discharged with an honorable character of service and were issued a DD Form 214, Certificate of Release or Discharge from Active Duty for the period of 25 May 2007 to 30 November 2015 due to intradepartmental transfer.

On 30 November 2015, you signed a United States Marine Corps Appointment Acceptance and Record (NAVMC 763) in the U.S. Marine Corps Reserve as a Captain under the RES REG program.

In accordance with MARADMIN 213/16 published on 21 April 2016, This MARADMIN announced the FY18 U.S. Marine Corps Officer Promotion selection board schedule and provided promotion guidance. The FY18 U.S. Marine Corps officer promotion selection boards to recommend both active and reserve component officers for promotion convened as follows: Selection to Major in the Reserve component convened on 10 January 2017.

On 29 March 2017, you signed a Judge Advocate General Corps Student (1955) Program Service Agreement (NAVCRUIT 1131/136) upon having volunteered for appointment as Ensign, 1955, in the USNR, in the JAG Corps Student Program.

On 29 March 2017, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the inactive U.S. Naval Reserve as an Ensign with a day of rank 22 March 2017 with a designator code of 1955 (An Unrestricted Line Officer under instruction as a prospective Judge Advocate General's Corps officer).

In accordance with ALNAV 034/17 published on 22 May 2017, FY-18 U.S. Marine Corps Unrestricted Reserve Major Selections announced that the following named Unrestricted Reserve Officers on the Reserve Active-Status list of the Marine Corps have been selected for promotion to the grade of Major. Your name was listed with a selection number of 220 and Monitored Command Codes (MCC) IRR.

In accordance with MARADMIN 538/17 published on 29 September 2017, under the provisions of section 14308 of ref (a), the Secretary of the Navy, acting for the President of the United States, hereby authorized the promotion of the following named reserve officers to the grade indicated. Rank, pay, and allowances were effective from 1 November 2017. Your name was not listed.

On 13 May 2018, you received a Juris Doctor degree (Law) from the University of ██████████
██████████

On 15 October 2018, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the active U.S. Navy as a Lieutenant with a day of rank 1 October 2018 with a designator code of 2500 (A Judge Advocate General Corps Officer).

You requested adjustment to your entry grade to Lieutenant Commander (O4) and appropriate adjustment of your entry grade date of rank. If not granted, you requested adjustment to your entry service credit. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that you were selected for Major (O-4) by a promotion board held on 10 January 2017. Furthermore, the 27 December 2006 version of DoDI 1300.04 directs the Secretaries of the Military Departments in paragraph to “integrate transferring officers already on a promotion list to the next highest grade of the losing Service or Department, into the promotion list of the gaining Military Service...”

In accordance with MARADMIN 213/16, the FY18 U.S. Marine Corps officer promotion selection boards were scheduled to convene on 10 January 2017 to recommend both active and reserve component officers for promotion to Major. On 29 March 2017, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the inactive U.S. Naval Reserve as an Ensign. On 22 May 2017, ALNAV 034/17 was published, and your name was on the list of those selected for promotion to the grade of Major. The Board concluded that when you transferred to the Navy, you had not been on a promotion list, but on a list of officers selected to be considered for promotion. The Board based this decision on the fact that your name was not on the list contained in MARADMIN 538/17 authorizing the promotion of the named reserve officers. Therefore, the Board determined that you were not on a list of officers *already* on a promotion list when you transferred to the Navy. Furthermore, you contend that Title 10, United States Code Section 533(f) applies in your case. Section 533(f) refers to a reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force. You were a reserve officer appointed as an Ensign in the inactive U.S. Navy Reserve. In regards to your request to adjustment to your entry service credit, you contend that the OPNAVINST 1120.11A dated 14 July 2015 directly conflicts with the provisions of DoD Instructions that direct the calculations of the amount of prior commissioned service credit to be granted, or its limitation. The Board disagreed. DoDI 1312.03 states, “The entry grade credit that is awarded will be the sum of the prior commissioned service *allowed* and the amount of constructive service credit *allowed*. Credit for prior service as a commissioned officer *may not exceed* 1 year for each year spent in Active duty commissioned service.” (Emphasis added). OPNAVINST 1120.11A states the amount of constructive service that is allowed for appointment in the JAGC is 48 months. Furthermore, it determines that the maximum amount of credit awarded for prior service is 1 year. The Board concluded that this is well within the provisions of DoDI 1312.03 and that calculating your entry grade credit in accordance with OPNAVINST 1120.11A is not in conflict with higher authority. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

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,

9/26/2023

