



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

█
Docket No. 1329-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 28 November 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 Director, Military Community Management (BUPERS-3) memorandum 1212 Ser B3/0955 of 26 September 2023, which was previously provided to you for comment, and your response to the advisory.

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 May 2004, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the active U.S. Navy as an Ensign with a day of rank 28 May 2004 with a designator code of 1395 (An Unrestricted Line Officer who is in training for duty involving flying as a pilot).

On 23 July 2013, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the inactive U.S. Naval Reserve as a Lieutenant with a day of rank 1 June 2008 with a designator code of 1325 (An Unrestricted Line Officer who is qualified for duty involving flying heavier-than-air or heavier and lighter-than-air type aircraft as a Naval Flight Officer).

You resigned 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 28 May 2004 to 31 July 2013 upon completion of required active service.

In accordance with DoDI 1312.03, published on 22 November 2013, 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 (EGC) they are awarded when appointed. The EGC 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 under these circumstances: (1) Active duty commissioned service (except as a commissioned warrant officer), including periods of active duty for training and (3) Commissioned service (except as a commissioned warrant officer) in an active status, but not on active duty, for Reserve commissioned officers.

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. Constructive service credit must be determined in accordance with these guidelines: (1) A period of time will be counted only once when calculating constructive service credit. (2) Except as provided in paragraphs 1b(2)(a), (b), and (c) of this enclosure, periods of time spent as a commissioned officer on active duty or in an active status may not be counted when calculating constructive service credit. (3) Qualifying periods of less than 1 year must be proportionately credited. (4) Except as provided in paragraph 2b of this enclosure, the number of years creditable as constructive service credit is limited. For judge advocates: 1. Entry grade for appointment, designation, or assignment must not exceed 3 years of credit.

EGC. A person granted service credit in accordance with this instruction and placed on the active-duty list or reserve active-status list of a Military Service may have an entry grade determined by comparing EGC with the appropriate promotion phase points of the Military Service and officer category concerned. The Secretary of Defense may authorize the Secretary of a Military Department concerned to credit any person originally appointed, designated, or assigned as a judge advocate with a period of constructive service that will result in appointment of the person to the grade of captain (lieutenant in the Navy). However, the date of rank of such person must be junior to that of all other officers of the same grade on the active-duty list.

On 1 June 2015, you were appointed to Lieutenant Commander/O-4.

In accordance with OPNAVINST 1120.11A, published on 14 July 2015, the purpose of this instruction is to establish regulations governing: Appointment of officers in the Judge Advocate General's Corps (JAGC), Voluntary recall of officers of the JAGC to the active duty list (ADL), Award of EGC upon appointment in the JAGC under sections 533 and 12207 of 10 U.S.C. and DoD Instruction 1312.03 of 22 November 2013.

The JAGC Student Program will be used to commission law school students into the Navy Individual Ready Reserve as line officers under instruction (designator 1955).

Maximum EGC. 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 EGC granted, other than for officers accessed through the Law Education Program (LEP), will be limited to 48 months. a. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)), considering the recommendations of the Chief of Naval Operations (N1), may waive this limit per the circumstances in subparagraphs 11a (1) through 11a (3). (3) When a gross inequity to the applicant would otherwise result. b. Before appointment, selectees for whom a waiver is granted must acknowledge in writing that, although they remain eligible and subject to recall to active duty, they may not be permitted to transfer onto the ADL.

You were released from active duty for training 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 21 July 2015 to 22 June 2016 upon completion of required active service.

On 26 October 2016, you signed a Request for Conditional Release (DD Form 368) from the Navy Reserves to Active Duty JAGC, and it was approved by cognizant authority on 6 December 2016 and valid until 7 December 2017.

On 21 May 2017, you received a law degree from the █ University, █
█

On 18 July 2017, Commander, Navy Personnel Command (PERS-91) notified you that you had been honorably discharged from the Navy Reserve, effective 18 July 2017, due to your transfer to the Active Component of the United States Navy JAG Corps.

On 19 July 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 18 July 2017 with a designator code of 1955 (An Unrestricted Line Officer under instruction as a prospective Judge Advocate General's Corps officer).

On 20 January 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 January 2018 with a designator code of 2500 (A Judge Advocate General Corps Officer).

You requested restoration of the rank of Lieutenant Commander effective January 2018 with associated back pay and allowances, the Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that under DoDI 1312.03 published on 28 December 2018, the Navy erroneously failed to award credit for your prior active duty and reserve commissioned service when you transferred from Naval Aviation to join the Navy JAG Corps in January 2018. However, the Board concluded that the governing directive at the time you signed the Officer Appointment Acceptance and Oath of Office on 20 January 2018 was DoDI 1312.03, published on 22 November 2013. OPNAVINST 1120.11A was published on 14 July 2015, and established regulations regarding the award of EGC upon appointment in the JAGC under sections 533 and 12207 of 10 U.S.C. and DoD Instruction 1312.03 of 22 November 2013. Under OPNAVINST 1120.11A, the maximum EGC available to you was 48 months, which you received. You assert that you suffered a gross inequity when the Navy JAG Corps capped your total entry grade service credit at 48 months. Furthermore, in accordance with

your rebuttal to the advisory opinion, you agreed the general rule for maximum EGC allowed in your case is 48 months, however the advisory opinion did not address the inequity in your case, stating that in accordance with OPNAVINST 1120.11A, "The ASN (M&RA) considering the recommendations of the CHNAVPERS, may waive this limit in the following circumstances: ... (3) When a gross inequity to the applicant would otherwise result." In support of your claim, you assert that you were wrongfully denied the opportunity to participate in the LEP and that Navy recruiters misrepresented that you would be promoted to LCDR within 12 months of graduating from the Navy Justice School. Furthermore, you assert that there are different standards for similarly situated officers, in that the Navy JAG Corps prioritizes rank achieved from within its own Reserve Force, but minimizes the same rank achieved in the unrestricted line forces, such as Naval Aviation. The Board carefully considered your comments regarding the inequities you listed and agreed that under OPNAVINST 1120.11A, the ASN (M&RA) may have waived the limit of 48 months EGC due to gross inequity, however as the Board understood it, if you had been granted a waiver, before your appointment, you would have been required to acknowledge in writing that, although you remained eligible and subject to recall to active duty, you may not be permitted to transfer onto the ADL. Because you continued your career on the ADL, a retroactively applied waiver of the maximum EGC allowed under OPNAVINST 1120.11A is not possible. Furthermore, that even if the Board agreed that there were inequities sufficient to waive the maximum EGC, calculating your EGC under guidance published after your appointment would be inappropriate. Therefore, the Board determined that you were awarded the correct amount of EGC and that no change to your record is warranted. 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,

12/4/2023

