



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. 1481-23
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 25 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. In addition, the Board also considered the advisory opinion by Navy Personnel Command (NPC) memorandum 5420 PERS-836/13 of 6 March 2023, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

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 10 U.S. Code § 1407, except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d). (1). General Rule. The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by 36.

Exception for enlisted members reduced in grade and officers who do not serve satisfactorily in highest grade held: Affected Members. A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000 in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, non-judicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade.

On 6 November 2002, you entered active duty. On 16 September 2006, you were advanced to GM2/E-5. On 16 June 2012, you were advanced to GM1/E-6. On 4 August 2017, you received Non-Judicial Punishment (NJP) for violation of Uniform Code of Military Justice Article 92. You were awarded a forfeiture of pay 1/2, and reduction in rate suspended for 6 months. On 30 January 2021, you received NJP for violation of Uniform Code of Military Justice Article 92. You were awarded 30/30, reduction in rate to GM2/E-5.

On 30 November 2022, you transferred to the Fleet Reserve in the pay grade of GM2/E-5.

You requested that your retired pay to reflect time served in respective paygrades in your last 36 months. 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 on 30 January 2021, you were found guilty at NJP for violation of Article 92 and were awarded 30/30 and reduction in rank to E-5. On 30 November 2022, you were transferred to the Fleet Reserve. In accordance with Title 10, United States Code, Section 1407, enlisted members who were reduced in grade, the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as if the member first became a member of the uniformed service before 8 September 1980, unless the member was subsequently promoted to a higher enlisted grade. The Board concluded that your retired rank and pay is correct and found no error or injustice to warrant a change to your record. 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,

4/28/2023

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Deputy Director

Signed by: █