



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. 2068-23
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 28 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 by the Chief of Naval Personnel Legal Office of 28 July 2023 and your response to the opinion.

On 15 May 2008, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the active U.S. Navy as an Ensign with a date of rank of 23 May 2008 with a designator code of 1160 (unrestricted line officer billet for an officer in training for Surface Warfare qualification).

In accordance with OPNAVINST 1120.11A, published on 14 July 2015, this instruction applies to all individuals appointed as active or reserve officers in the Navy Judge Advocate General's Corps (JAGC), including officers transferred from another uniformed service, reserve officers transferred into the active component, reserve officers voluntarily recalled to the active duty list, and officers transferred from the line or another staff corps into the JAGC.

Maximum Entry Grade Credit: 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.

Student program selectee with prior commissioned service (other than as a chief warrant officer or a participant in LEP). Computation of constructive service credit—a selectee who has previously served as an officer other than as a chief warrant officer or a participant in the LEP will be credited upon appointment in the JAGC with 3 years' constructive service credit for obtaining a Juris Doctor degree.

Computation of prior commissioned service credit: For appointment in the JAGC as a reserve officer, a selectee will be credited with 1 day of service credit for each day of prior service as a commissioned officer performed on active duty 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. A constructive date of rank as ensign will be calculated by subtracting the total entry grade credit from the inception date of the selectee's class at Officer Development School (ODS), or, if the requirement for ODS is waived by Chief of Naval Operations (N1), from the inception date of the selectee's class at ██████████.

You were released from active duty and transferred to the naval reserve 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 15 May 2008 to 24 August 2015 upon completion of required active service.

On 1 June 2018, you received a Juris Doctor degree from the ██████████, School of Law, ██████████. On 25 August 2018, Commanding Officer, Navy Operational Support Center North Island notified you were permanent appointed to Lieutenant Commander/O-4 with a date of rank and effective date of 1 July 2018.

In accordance with DoD Instruction 1312.03 Entry Grade Credit for Commissioned Officers and Warrant Officers, published on 28 December 2018, subject to the limitations in this section, a person's entry grade, date of rank, and service in grade for promotion eligibility will be determined by the amount of entry grade credit awarded upon original appointment. The amount of entry grade credit will equal the sum of the prior commissioned service credit and the constructive service credit a person is given. Credit will be awarded pursuant to Sections 533 and 12207 of Title 10, U.S.C., and this issuance. A period of time will be counted only once when calculating entry grade credit. Qualifying periods of less than 1 full year will be proportionally credited to the nearest day. Prior commissioned service credit will be calculated before constructive service credit.

For regular appointments, except as permitted by Paragraph 3.2.c. or 3.2.d., credit will be awarded on a day-for-day basis for any active commissioned service. c. The Secretaries of the Military Departments may limit the amount of credit for prior commissioned service in a field other than the professional specialty for which the person is currently being appointed, but will award no less than a half day credit for each day of such service. d. The Secretary of the Military Department concerned may deny prior commissioned service credit for each day of constructive service credit a person who is not currently a regular officer or a reserve officer in an active status receives for the education, training, or experience required for

appointment, designation, or assignment as a judge advocate in a Military Department, as a chaplain, or in other officer career fields as designated by the Secretaries of the Military Departments. The total amount of constructive service credit awarded to judge advocates and chaplains for advanced education may not exceed 3 years.

On 10 April 2019, Commander, Navy Personnel Command (PERS-911) notified you that your request contained in DD Form 368 of 6 February 2019 for a conditional release from the navy reserve is approved, per SECNAVINST 1000.7F OF 5 January 2006 and DoDI 1300.4 of 15 November 1996. If appointed in the active duty navy, you will be discharged from the navy reserve the day prior to your appointment. If you are not accepted in the active duty by 30 September 2019 the conditional release granted herein is automatically revoked without further correspondence. In the event additional time is required to affect your appointment, you must notify Navy Personnel Command (PERS- 91 ID) prior to the expiration date mentioned above, setting forth the reasons for the delay and requesting an extension of time.

On 2 October 2019, Commander, Navy Personnel Command notified you that, your request for an extension of your conditional release from the navy reserve is approved. The release is valid until 30 April 2020.

On 1 January 2020, you signed an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) in the active navy as a lieutenant with a date of rank of 1 January 2020 with a designator code of 2500 (Staff corps officer billet requiring law specialty).

On 22 September 2020, Commander, Navy Personnel Command (PERS-91) notified you that you have been honorably discharged from the navy reserve (An unrestricted line officer who is qualified in surface warfare), effective 31 December 2019, due to your transfer to the active component of the navy.

You requested an update of your entry grade credit (EGC) to accurately reflect 3.6 years of prior commissioned service and constructive credit for 3 years of law school for a total of 6.6 years of entry grade credit per DoD Instruction 1312.03 of 28 December 2018. 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 OPNAVINST 1120.11A was published to establish regulations governing appointment of officers in the JAGC and it used the guidelines in DoD Instruction 1312.03 of 22 November 2013 to determine how the navy would award EGC. Under OPNAVINST 1120.11A, the maximum EGC you could have been awarded was 4 years. You assert that OPNAVINST 1120.11A was erroneously used to calculate your EGC and that the correct guidance was contained in DoD Instruction 1312.03 of 28 December 2018. Furthermore, the default rule from DoD Instruction 1312.03 of 28 December 2018 in effect when you recommissioned on active duty was to award day-for-day credit for prior commissioned service. However, DoD Instruction 1312.03 of 28 December 2018 states that, *“except as permitted by Paragraph 3.2.c. or 3.2.d., credit will be awarded on a day-for-day basis for any active commissioned service”* (emphasis added). Paragraphs 3.2.c. and 3.2.d state that *“The Secretaries of the Military Departments may limit the amount of credit for prior commissioned service in a field other than the professional specialty for which the person is currently being appointed, but will award no less than a half day credit for each day of such*

service.’ And, “The Secretary of the Military Department concerned may deny prior commissioned service credit for each day of constructive service credit...” The Board concluded that the JAGC’s accession and EGC policies outlined in OPNAVINST 1120.11A was still in effect at the time of your reentry into the navy and it limited prior service credit to no more than one year, and a total EGC of 4 years for JAGC appointments. Although DoD Instruction 1312.03 of 28 December 2018 permitted more credit for prior commissioned service to be awarded to you, in order for your EGC calculation to be in compliance with OPNAVINST 1120.11A (no more than 4 years), application of both Secretarial authority limitations for prior commissioned service credit is required. In accordance with the advisory opinion, the Chief of Naval Personnel has addressed awarding EGC to Navy JAG and chaplain officers in CNP memorandum 1120 Ser NI/021 of 11 Apr 23. It applies both Secretarial authority limitations permitted in DoD Instruction 1312.03 of 28 December 2018. The Board could not find references suggesting that between the release of DoD Instruction 1312.03 of 28 December 2018 and the 2023 CNP memorandum that credit for prior commissioned service was awarded without either Secretarial authority limitation or with only one. Therefore, the Board determined that applying both Secretarial authority limitations in DoD Instruction 1312.03 of 28 December 2018 is appropriate in calculating your EGC and results in the same amount of EGC you were awarded under OPNAVINST 1120.11A. 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,

10/2/2023

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