



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. 5827-23
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.

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 19 October 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 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 OPNAVINST 7220.12, published on 24 December 2005, Navy policy restricts eligibility to berth ashore for single shipboard Sailors E-5 and E-4 (with greater than four years of service), contingent upon the approval of their commanding officer. This approval, however, does not constitute an authorization to receive a housing allowance, but simply allows the member to reside off the ship.

The shore-based facility commander shall make the determination whether the member will be berthed in single bachelor quarters or entitled to draw an off-base housing allowance.

On 16 November 2009, you were advanced to ET3/E-4.

On 10 July 2012, you and your future spouse signed a residential lease or month to month rental agreement starting 16 July 2012 to 30 June 2013 located at ██████████, ██████.

On 12 November 2013, you got married.

You were released from active duty and transferred to the Navy Reserve with an honorable character of service and was issued a DD Form 214, Certificate of Release or Discharge from Active Duty for the period of 28 May 2008 of 27 May 2014 upon completion of required active service.

On 19 September 2014, Defense Finance and Accounting Service (DFAS) notified you that the organization maintaining your active duty military pay account has advised them that you are indebted to Department of Defense as a result of overpayments before your recent separation. The account statement explains the reason for the debt. You were notified that you may make monthly installment payments, and they will charge interest on the remaining balance. Finally, they stated that they want to work with you to resolve this matter as quickly as possible.

On 15 August 2022, notified you that they continue to try to collect the debt of \$17,358.99 that you owe to the Department of Defense, DFAS. You have failed to pay your debt in full or otherwise make arrangements to pay your debt. DFAS previously notified you why you owe this debt. If you do not pay your debt or take other action described below, the Treasury Department, on behalf of DFAS will require your employer to deduct up to 15% from your disposable pay each period until your debt, including interest, penalties, and costs are paid in full. If you pay your debt in full, or enter a repayment plan acceptable to the Treasury before 14 September 2022, a Garnishment Order will not be issued to your employer.

On 3 February 2023, DFAS notified you that in response to your request for a hearing under Title 31, United States Code (U.S.C.), § 3720D and Title 31, Code of Federal Regulations (C.F.R.), § 285.11, it was determined an administrative hearing was appropriate. The hearing was accomplished by reviewing the records to validate the debt for the purpose of administrative wage garnishment.

The enclosed copy of the hearing decision is for your information. FINDINGS: In accordance with DoD 7000.14-R FMR, Volume 7A. Chapter 26. paragraph 10.1.7.3, military members without a dependent in grade E-4 assigned to permanent sea duty aboard a ship cannot elect not to occupy assigned shipboard Government quarters and receive Basic Allowance for Housing (BAH). The U.S. Navy determined you were not entitled to receive BAH effective April 1, 2013; however, you continued to receive BAH from April 1, 2013 through February 28, 2014. Collection of BAH entitlements erroneously received by you resulted in a debt of \$16,577.70.

Your prior U.S. Navy Personnel Support (PERSUPPS) Office later determined that you were entitled to BAH at the with dependents rate from 12 November 2013 to 31 March 2014, which was credited to you. You were given sufficient time to resolve the debt; and when it became delinquent, it was referred to the Treasury Department on July 24, 2022. Then, on October 4, 2022. the Treasury Department notified you of their intent to collect the debt by

Administrative Wage Garnishment (AWG). Because you complied with the requirement to request a hearing on or before October 26, 2022, collection by AWG was suspended pending the results of this hearing decision. As of this hearing, your debt was \$13,150.75 which includes principal, interest, administrative fees, and penalties. This debt was transferred to the Treasury Department, which added \$4, 208.00 in U.S. treasury fees, for a total debt of \$17,358.99.

Based on a review of your records, and pertinent documentation, it is determined the debt remains valid and the amount is correct. You were provided due process and collection of the debt by AWG, not to exceed 15% of disposable pay, is proper.

You requested that your naval record reflect no overpayment of BAH during the period of 1 April 2013 through 31 December 2013, the Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that this is an administrative error on the part of the Navy/PSD/DoD in presuming that you were not eligible for BAH at that time. However, the Board concluded that in accordance with OPNAVINST 7220.12, your ability to reside off the ship was contingent upon the approval of your Commanding Officer. This approval, however, *does not* constitute an authorization to receive a housing allowance, but simply allows the member to reside off the ship. The shore-based facility commander makes the determination whether the member will be berthed in single bachelor quarters or entitled to draw an off-base housing allowance. In other words, you may have been authorized to live off the ship, but there is no evidence that you received permission from the shore based commander to either live off base or to receive BAH. Therefore, the Board determined that your debt is valid and no change to your record is warranted.

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,

10/30/2023

