



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. 6570-23
Ref: Signature Date

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Dear █:

This is in reference to your application for correction of your deceased spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of Subject's 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 9 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 Subject's naval record and applicable statutes, regulations, and policies.

Subject was discharged with an Honorable character of service and was issued a Report of Separation from the Armed Forces of the United States (DD Form 214) for the period of 7 April 1954 to 3 July 1954 in order to accept appointment in the United States Naval Academy (USNA).

On 12 July 1954, Subject was admitted as a Midshipman in the USNA.

On 4 June 1958, Subject graduated from the USNA with a Bachelor of Science degree. And on 4 June 1958, Subject signed an Acceptance and Oath of Office (NAVPERS 339) in the active U.S. Navy as an Ensign with a day of rank of 4 June 1958 with a designator code of 1100.

On 17 February 1960, Chief of Naval Personnel issued Subject Establishment of Pay Entry Base Date (NAVPERS 575) establishing Pay Entry Base Date of 7 March 1958. Active service and/or active duty for training performed as an enlisted member: 2 months and 27 days.

On 1 March 1988, Subject notified The Secretary of the Navy via Commander, Naval Telecommunications Command and Commander, Naval Military Personnel Command (Code 23) that "I will complete 30 years of service on 1 April 1988. I request transfer to the retired list on 1 May 1988. I intend to take no separation leave. I have read and thoroughly understand SECNAVINST 5370.2H concerning standards of conduct and pre and post retirement employment.

I further understand that I may direct any questions to the Office of the Judge Advocate General, Code 12.”

On 15 March 1988, Chief of Naval Personnel notified Secretary of the Navy that “I recommend the requests for voluntary retirement in enclosure (1) be approved for the first of the month indicated below, or within 45 days after each individual is found physically qualified for retirement, whichever is later. Each individual is eligible for retirement under SECNAV 1811.31. Retirement will be effected in such grade as each member may be entitled on the effective date of retirement.”

Subject retired with an Honorable character of service and was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 7 March 1958 to 30 April 1988 upon attaining maximum time in grade/time in service.

On 8 July 2021, Subject passed away.

You requested that your spouse’s records be corrected to reflect 34 years vice 30 years of active duty service with recomputation of retired pay and survivor benefit plan. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that in accordance with 10 U.S.C. Section 516, “...an enlistment or period of obligated service of an enlisted member who accepts an appointment as a Cadet or Midshipman at one of the service academies may not be terminated because of acceptance of such appointment.” therefore Subject was erroneously discharged from the Army when he entered USNA. You also assert that you are aware that his time at USNA would not normally count, however because Subject accepted his appointment as a midshipman before 1956 his time served at the USNA should count in the calculation of his total active service in accordance with 10 U.S.C. Section 971 (a): “The limitation in section 971(a) of Title 10, United States Code,¹ shall not apply with respect to a period of service referred to in that section while also serving under an appointment as a cadet or midshipman accepted before June 26, 1956.” However, 10 U.S.C. Section 516² refers to those

¹ In accordance with 10 U.S.C. Section 971, the period of service under an enlistment or period of obligated service while also serving as a cadet at the United States Military Academy (USMA), the United States Air Force Academy (USAFA), or the United States Coast Guard Academy (USCGA), or as a midshipman at the USNA or in the Naval Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force. (b) In computing length of service for any purpose, (1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the USNA or as a cadet at the USMA, USAFA, or USCGA; (2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the USNA or as a cadet at the USMA, USAFA, or USCGA; and (3) no officer of the Coast Guard may be credited with service as a midshipman at the USNA or as a cadet at the USMA, USAFA, or USCGA. Application of Subsection (A) to Service Under Appointment Accepted Before June 26, 1956 – “The limitation in section 971(a) of Title 10, United States Code, shall not apply with respect to a period of service referred to in that section while also serving under an appointment as a cadet or midshipman accepted before June 26, 1956.”

² In accordance with 10 U.S.C. Section 516, effect upon Enlisted status of acceptance of appointment as cadet or midshipman. (a) The enlistment or period of obligated service of an enlisted member of the armed forces who accepts an appointment as a cadet at the USMA, the USAFA, or the USCGA, or as a midshipman at the USNA or in the Naval Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Naval Reserve, to the compensation and emoluments of a midshipman in the Naval Reserve. (b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Naval Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his enlisted status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service.

members who are on enlisted contracts or have a Military Service Obligation prior to accepting an appointment as a midshipman or cadet. Additionally, section 971(a) addresses the period of service under an enlistment or period of obligated service while also serving as a midshipman at the USNA. In Subject's case, the Board determined that he was discharged by the Army on 3 July 1954 in order to accept an appointment at the USNA, which commenced on 12 July 1954. The Board agreed that Subject was under no enlisted contract when he entered the USNA and he had no military service obligation to fulfill. Therefore, the provisions of 10 U.S.C. Section 971(b) apply: In computing length of service for any purpose, no officer of the Navy or Marine Corps may be credited with service as a midshipman at the USNA. Furthermore, although he is not entitled to be credited with service while a midshipman at the USNA, Chief of Naval Personnel has accounted for his prior active Army service in the adjustment of his Pay Entry Base Date on 17 February 1960. The Board concluded that Subject's discharge from the Army is not within the scope of this Board's authority to correct, and no change to Subject's naval 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,

11/20/2023

