



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. 8077-23
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 12 March 2024. 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 Navy Personnel Command memorandum 5420 PERS-835 of 27 December 2023, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

On 27 May 1994, you enlisted in the U.S. Naval Reserve for 8 years with an Expiration of Obligated Service of 26 May 2002. You were released from active duty with an honorable character of service as an HM2/E-5 and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 1 February 1995 to 15 June 2003 upon completion of required active service.

You were discharged with an honorable character of service as an SGT/E-5 and were issued a Department of the Army and the Air Force National Guard Bureau Report of Separation and Record of Service (NGB Form 22) for the period of 11 August 2003 to 10 August 2004 upon expiration of term of service.

You were discharged with an Honorable character of service as an OC/E-6 and were issued a DD Form 214 for the period of 11 February 2009 to 9 May 2010 upon accepting a commission or warrant in same branch of service.

You were discharged with an honorable character of service as a LT/O-3 and were issued a DD Form 214 for the period of 10 May 2010 to 28 February 2018 due to intradepartmental transfer.

In accordance with 10 U.S.C. section 632, except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 8146(e) or 8372 of this title applies) and except as provided under section 637(a) of this title, each officer of the Army, Air Force, Marine Corps, or Space Force on the active-duty list who holds the grade of captain or major, and each officer of the Navy on the active-duty list who holds the grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall—

If on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 7311, 8323, or 9311 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

In accordance with DoD 7000.14-R FMR Volume 7B, Chapter 1, A commissioned officer may be voluntarily retired after completion of 20 years of active service, of which at least 10 years is active commissioned service.

In accordance with 10 U.S.C. section 8334, (a) Each member of the naval service covered by subsection (b) who, after December 4, 1987, is retired with less than 30 years of active service or is transferred to the Fleet Reserve or Fleet Marine Corps Reserve is entitled, when his active service plus his service on the retired list or his service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to—(1) warrant officers of the naval service; (2) enlisted members of the Regular Navy and Regular Marine Corps; and (3) reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

(c) An enlisted member of the naval service who is advanced on the retired list under this section is entitled to recompute his retired or retainer pay under formula A of the following table, and a warrant officer of the naval service so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

You were released from active duty and transferred to the Fleet Reserve with an honorable character of service as an HMC/E-7 and were issued a DD Form 214 for the period of 1 March 2018 to 30 September 2020 upon having sufficient service for retirement.

You requested to have your retirement pay changed to your High-3, the Board in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include

your assertions. Your record shows you were commissioned on 10 May 2010 after serving multiple periods of service as an enlisted member in the Navy and Army National Guard. On 28 February 2018, you did an intradepartmental transfer to active duty as enlisted HMC/E-7. You assert that “[t]he new rule change, I was at 17.5 when I retired and would have been eligible to receive my High 3 retirement.” However, the Board noted that it seems that you believe that in accordance with Title 10, U.S.C. Section 632, you were entitled to stay on the active duty list as a LT until you qualified for retirement, which the Board determined is not the case. In this connection, as the result of failure to select twice for promotion to the next highest grade, you were permitted to continue on active duty, however you were continued in the enlisted grade of E-7 until your retirement. Additionally, in accordance with DoD 7000.14-R FMR, you were not retired in the grade of LT because you did not have 10 years of commissioned active service. Therefore, the Board determined that your retirement in the grade of E-7 is appropriate and your pay is calculated accordingly. Thus, the Board substantially concurred with the comments contained in the advisory opinion. Finally, the Board determined that you may submit a request to Navy Personnel Command (PERS-835) upon reaching 30 years of service to retire in the highest grade held and to recalculate your retired pay. In accordance with 10 U.S.C. Section 8334, when your active service plus your service on the retired list or your service in the Fleet Reserve totals 30 years, you may be advanced on the retired list to the highest grade in which you served on active duty satisfactorily, as determined by the Secretary of the Navy.

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,

3/20/2024

