



**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. 1790-24  
Ref: Signature Date

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Dear █

This is in reference to your application for reconsideration of the determination of the Board for Correction of Naval Records [hereinafter referred to as the Board] in Docket No. 2997-23 that the separation date reflected on your DD Form 214 should be change to 12 November 2020 vice 4 December 2020.<sup>1</sup> Upon careful review and reconsideration of all the evidence of record, the Board found insufficient evidence of any error or injustice in this decision. To the contrary, the Board unanimously found this decision to be fully supported by the evidence and equitable. Accordingly, your request for further relief has been denied.

A three-member panel of the Board, sitting in executive session, reconsidered your application on 19 September 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board included your application together with all material submitted in support thereof; the entire case file for Docket No. 2997-23; 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 its understanding of the issues involved in your case. Accordingly, the Board determined that your personal appearance was not necessary and considered your case based on the evidence of record.

The Board unanimously agreed with the determination made in Docket No. 2997-23 that you were released from active duty on 8 October 2020 and returned to inactive reserve status on 9 October 2020. This fact may not have been immediately apparent to you at the time since your command did err in failing to issue you a DD Form 214, but it is obvious now based upon an objective review of the evidence. Your unit clearly believed that this was the date that you transitioned back to inactive reserve status, as evidenced by the fact that it recorded this

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<sup>1</sup> The Board acknowledges that you requested reconsideration of the decision of the Assistant General Counsel (Manpower and Reserve Affairs) in Docket No. 6197-18 in addition to reconsideration of the Board's decision on remand in Docket No. 2997-23. Reconsideration of the former was conducted separately under Docket No. 6863-24, the decision for which was provided to you under separate correspondence.

information in the Navy Standard Integrated Personnel System (NSIPS), that you were issued a fitness report which specifically stated that your mobilization ended on 8 October 2020, that you were included on a 28 October 2020 e-mail from your command seeking confirmation of who would be attending Reserve Drill in November, and that you were credited with performing that drill on 13-14 November 2020.<sup>2</sup> As you belonged to the same unit in both your active and reserve statuses, its determination in this regard was conclusive. The Board noted that you have provided no evidence to support your contention that you were not actually released from active duty on 8 October 2020. Rather, you have simply argued that you remained on active duty because your DD Form 214 was not ready for delivery to you. The Board previously rejected that novel argument in Docket No. 2997-23 and does so here again. It is your burden to prove the existence of an error in your record, and the mere presentation of a specious argument falls far short of the burden to prove that your unit erred in releasing you from active duty on 8 October 2020. The error in your case was not that you were released from active duty on 8 October 2020, but rather that your unit failed to issue you a DD Form 214 at that time. The injustice which resulted from that error was properly, equitably, and fully addressed by the Board in Docket No. 2997-23 by providing you more than a month of constructive service credit for active duty service that you did not actually perform. Therefore, the Board found that you are not entitled to more than this very generous relief.

Although the Board found it reasonable for you to believe that you remained on active duty for some time after 8 October 2020 due to your unit's failure to issue a DD Form 214 at that time, it was not reasonable for you to believe that you remained in that status after performing drill on 13-14 November 2020. You have sufficient experience to know that you could not perform Reserve Drill while mobilized on active duty, and your e-mail of 28 October 2020 demonstrated this knowledge. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that naval authorities properly performed their duties. Accordingly, the Board presumes that whoever made the entry did so because you actually performed that drill duty.<sup>3</sup> You have yet to provide any evidence to suggest otherwise, and your mere "recollection" that you did not perform such drill falls far short of your burden in this regard. Having found that the evidence of record to unequivocally reflect that you performed reserve drill on 13-14 November 2020, it was unreasonable for you to believe that you remained on active duty after that date. While you described this observation in Docket No. 2997-23 as a "veiled *ad hominem* attack," the Board saw it more as a statement of the obvious. Further, the credibility of your claim to have believed that you remained on active duty after that date is undermined by your repeated insistence that you were performing the military duties assigned to you and that "I was doing everything my command asked of me" at that time since you are well aware that you did not have any military duties assigned to you and nothing was asked of you at that time. Your attempt to "gaslight" the members of this Board with such sophistry did not

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<sup>2</sup> Your insistence in paragraph 6f(i) of the brief supporting your request for reconsideration that your command considered you to be on active duty beyond 8 October 2020 is simply not supported by the evidence. To the contrary, the evidence reflects that your command was well aware that there were issues with the processing of individuals for separation. For example, on 27 August 2020, your command was notified of this issue and directed to "overcommunicate" to members not to spend anticipated overpayments. As you provided this e-mail, the Board presumes that you were well aware of these warnings which further undermines your claim to have believed yourself to properly remain on active duty.

<sup>3</sup> The Board sees no relevance to the fact that this entry was not made until January 2021. The fact is that the entry was made, and you have provided the Board with no reason to believe that it was made erroneously.

enhance your argument or the credibility of your claim to have reasonably believed that you remained on active duty.

In reaching this conclusion, the Board took into consideration each of your alleged errors of fact in Docket No. 2997-23. Without exception, the Board found each of these alleged errors to be immaterial to the validity of your release from active duty on 8 October 2020 and/or inaccurate. The facts as stated in paragraph 4 of the decision document for Docket No. 2997-23 merely recited the evidence reflected in the corresponding enclosures and the reasonable conclusions drawn therefrom, and none of these alleged errors were remotely relevant to the validity of your release from active duty on 8 October 2020. In fact, some of your alleged errors actually support the Board's conclusion that you were released from active duty on that date. Specifically, in paragraph 6f(i) of the brief supporting your request for reconsideration, you noted that the Board failed to note a timestamp on an NSIPS entry in which the Division Director of Navy Reserve Project Office DEERS/RAPIDS asked why you were still "reflecting on Active Duty" on 8 December 2020. Contrary to your reading, this evidence actually supports the Board's conclusion that you were released from active duty on 8 October 2020 and that the actual error in your case was the failure of your unit to follow through on the paperwork necessary to memorialize this action during the confusion caused by the COVID-19 lockdowns. It also reflects, contrary to your contention, recognition of this error at that time and immediate efforts to rectify it. Ultimately, you failed to provide the Board with any evidence upon which it might reach a different conclusion than that reached in Docket No. 2997-23.

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,

10/17/2024

