



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. 5816-24
Ref: Signature Date

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Dear Petitioner:

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 5 November 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 as well as the 12 September 2024 advisory opinion (AO) furnished by the Commander, Navy Personnel Command (PERS-4). The AO was provided to you on 24 September 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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.

The Board carefully considered your request to correct your date of rank (DOR) for Lieutenant (LT/O-3) to 1 May 2021 and to adjust your lineal number to 17325200. The Board considered your statement regarding selection for the Judge Advocate General Corps (JAGC) Active Component Direct Appointment program, which required you to complete a Conditional Release (DD368) to transfer to active duty. You contend that your Professional Training and Development Officer informed you that based on what he learned in a previous assignment at PERS, you should not have had to resign your commission to recommission into active duty. You referenced OPNAVINST 1427.2a and noted that you have a single break in active duty time that exceeds six-months. You also contend that given the one break in service, there is no reason

your lineal number should have shifted to the point that you effectively lost two years of service. You assert that this position is supported by the OPNAVINST's permissive language that a "Reserve commissioned officer may be adjusted to a later date." This adjusted date is meant to ensure that the officer remains competitive for promotions. You also assert that the OPNAVINST implies that the quality of the officer's service is a discriminator in the analysis, not just the quantity of service.

The Board, however, substantially concurred with the AO that no correction to your record is warranted. In this regard, the Board noted that your 7 November 2022 DOR is consistent with your active duty oath of office. Contrary to the statement by your Professional Training and Development Officer, Department of Defense Instruction 1300.04 provides that the "DD Form 368, "Request for Conditional Release *will be used in all cases* involving inter-service transfers and transfers between components for commissioned officers." The Board also noted that the JAGC based your entry grade and DOR upon your 320 days of prior active commissioned service, advanced education, training, and special experience, which resulted in 48 months of entry grade credit, and active duty grade of LT. The Board determined that your transfer to the active duty list, pay grade, and DOR were processed in accordance with applicable regulations. The Board also determined that your lineal number █ was properly assigned when you voluntarily accepted an active duty appointment. The Board further determined that any adjustments to your date of rank beyond what the JAGC can authorize is discretionary and requires a waiver. The Board found no evidence that the JAGC pursued a waiver in your case. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

11/15/2024

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