



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No. 8296-24  
Ref: Signature Date

██████████  
██████████  
██████████  
  
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 20 February 2025. 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 accordance with BUPERSINST 1001.39F, (May 2013) 2016. "Application for Receiving Non-Regular Retired Pay. Individuals are responsible for applying to receive retired pay. It is not an automatic process. However, NAVPERSCOM (PERS-912) provides advance notification to members prior to their eligibility date and will assist members with their application.

**Eligibility.** In order to receive non-regular service retired pay, a Navy Reserve member must: Normally, be at least 60 years of age or be eligible to receive non-regular retirement pay at a date earlier than age 60, per 10 U.S.C., section 12731; Complete requirements for issuance of an NOE as outlined in section 2008; and c. Submit an application package to NAVPERSCOM (PERS-912).

**Application Procedures.** NAVPERSCOM (PERS-912) notifies eligible personnel approximately 6 months prior to their eligibility date...The member must complete the application and send it to NAVPERSCOM (PERS-912) within 30 days of receipt to allow sufficient time for processing. Depending on the applicant's status, the application may need to be sent via other commands. The effective date of retired pay is the date of initial eligibility (attainment of age 60 or completion of the specific service requirement, whichever occurs later) or a subsequent date elected by the applicant. Service performed by members eligible to receive retired pay cannot be credited after age 62 for officers (age 60 for enlisted) unless the member has been granted an age waiver by NAVPERSCOM (PERS-911/913)."

On 25 May 2004, you signed Application for Correction of Military Record (DD Form 149), requesting to show that you were transferred to the Retired Reserve under the provisions of the Reserve Transition Benefits (RTB) Program and that you be transferred to the Retired List effective on your 60th birthday, 10 September 2006.

On 10 September 2006, you turned 60.

On 8 August 2008, BCNR notified you that, "...The final decision in your case is set forth in the Board's report of proceedings, a copy of which is enclosed. The approved changes to your naval record will be made by the Commander, Navy Personnel Command (NPC) Code 312, 5720 Integrity Drive, Millington, TN 38055-3120. Please wait at least 180 days from the date of this letter before contacting NPC about the status of your case."

On 22 August 2008, Commander, Navy Personnel Command notified you that "[p]er references (a) [10 U.S.C. 10154] and (b) [10 U.S.C. 12774(a)], the Secretary of the Navy approved your request and authorized your transfer to Retired Reserve status effective 1 March 2006.

Upon your submission of application per the guidelines of references (c) [BUPERSINST 1001.39F], you will be eligible under reference (d) [10 U.S.C. 1223] for retired pay benefits at age 60."

On 24 October 2008, Commander, Navy Personnel Command notified you that "[u]nder the decision of the Board for Correction of Naval Records, we have corrected your official naval record as shown in the recommendation portion of the letter you received dated 8 August 2008."

On 27 August 2018, Commander, Navy Personnel Command (PERS-9) notified you that "[p]er reference (a) [10 U.S.C. § 12731(a)] the Secretary of the Navy approved your application for retired pay for nonregular service. Your initial date of eligibility for retired pay is 10 September 2006. Per your request, your authorization to retired pay is effective 10 September 2006.

Per references (b) [10 U.S.C. § 12732] and (c) [10 U.S.C. § 12733], computation of your retired pay under reference (d) [10 U.S.C. § 12739] will be based on 20 years of qualifying service, 01412 retirement points and a pay entry base date of 10 March 1983."

On 7 March 2019, Defense Finance and Accounting Service (DFAS) notified you that "[t]his is in reply to your claim for retired payment benefits. For the reasons set out more fully below, your claim is denied in part.

The Barring Act, 31 U.S.C. § 3702, bars payment of any claim not received within 6 years from the date it accrues. You presented a claim for retired pay on August 20, 2018 which is more than 6 years after the claim accrued. Therefore, your claim is untimely. Your claim in part is barred from consideration by this office and must be denied."

On 4 November 2021, Defense Legal Services Agency Defense Office of Hearings and Appeals notified you that "[w]e have considered your claim for retroactive retired pay for the period September 10, 2006, through August 20, 2012, in the amount of \$50,764.93. Under Title 31, United States Code (U.S.C.), section 3702(a), our Office settles claims concerning the retired pay of members of the uniformed services. For the reasons explained below, we have disallowed your claim."

You requested back retirement pay in the amount of \$50,764.93 from 10 September 2006 to 20 August 2012, which was denied due to the Barring Act. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that “[d]uring a 2018 review of my Navy personnel file, I discovered I had not heard back from BCNR regarding my 25 May 2004 request (Copy enclosed) for early retirement. In my research I discovered that BCNR had approved me for full retirement on 25 July 2008 (BCNR Review of Naval Record enclosed) ... Had I known of my retirement package earlier, I would have applied sooner whereby the Barring Act would not have come into play.” However, the Board concluded that in Docket No. 1831-07, you requested to show that you were transferred to the Retired Reserve under the provisions of the Reserve Transition Benefits (RTB) Program and that you be transferred to the Retired List effective on your 60th birthday, 10 September 2006. Despite the reservations stated in the Board Minority’s decision in Docket No. 1831-07, the Assistant General Counsel (AGC) approved the Board Majority’s recommendation to correct your record in such a way to show that you earned 20 qualifying years for a non-regular retirement. Your record was subsequently changed to reflect that you were transferred to the Retired Reserve on 1 March 2006 and to the Retired List on your 60th birthday, 10 September 2006. In making his decision, the AGC agreed with the Board Majority that in light of your “many years of excellent service,” points would be transferred to two previously unqualifying years to allow your record to show that you completed 20 qualifying years. In your current request, you state that you never learned of the results of Docket No. 1831-07 until 2018. However, the Board noted that your address listed on each of the letters informing you of the disposition of Docket No. 1831-07 matched the address listed on your DD Form 149 signed on 25 May 2004. Although it seems that your case was with BCNR for an unusual amount of time, you do not state that the official correspondence was sent to an incorrect/outdated address, and you offer no compelling reason why *you* did not inquire about the outcome of your request, either during the 4 years it was awaiting adjudication or in the 10 years after your record had been fixed. In fact, you admit that you only learned of it during what appears to be a routine review of your Navy personnel file. Therefore, the Board determined that the relief granted in Docket No. 1831-07, exceeded the relief you requested, and you have provided no evidence that the Navy is responsible for your lack of notification of that relief, therefore no further 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,

2/24/2025

