



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 4702-25
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 16 December 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 addition, the Board considered the advisory opinion contained in Office of Legal Counsel (BUPERS-00J) letter of ██████████ and Assistant Commander, Navy Personnel Command for Career Progression letter 5420 PERS-835 of ██████████ and your response.

The Board determined that your personal appearance, with or without counsel, would 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.

In accordance with 10 U.S.C. §1251 (2011). Age 62: regular commissioned officers in grades below general and flag officer grades; exceptions (2011). (a) General Rule.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps (other than an officer covered by section 1252 of this title or a commissioned warrant officer) serving in a grade below brigadier general or rear admiral (lower half), in the case of an officer in the Navy, shall be retired on the first day of the month following the month in which the officer becomes 62 years of age. (b) Deferred Retirement of Health Professions Officers.— (1) The Secretary of the military department concerned may, subject to subsection (d), defer the

retirement under subsection (a) of a health professions officer if during the period of the deferment the officer—(A) will be performing duties consisting primarily of providing patient care or performing other clinical duties; or (B) is in a category of officers designated under subparagraph (D) of paragraph (2) whose duties will consist primarily of the duties described in clause (i), (ii), or (iii) of such subparagraph. (2) For purposes of this subsection, a health professions officer is—(A) a medical officer; (B) a dental officer; (C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse; or (D) an officer in a category of officers designated by the Secretary of the military department concerned for the purposes of this paragraph as consisting of officers whose duties consist primarily of—(i) providing health care; (ii) performing other clinical care; or (iii) performing health care-related administrative duties. (c) Deferred Retirement of Chaplains.—The Secretary of the military department concerned may, subject to subsection (d), defer the retirement under subsection (a) of an officer who is appointed or designated as a chaplain if the Secretary determines that such deferral is in the best interest of the military department concerned. (d) Limitation on Deferment of Retirements. (1) Except as provided in paragraph (2), a deferment under subsection (b) or (c) may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age. (2) The Secretary of the military department concerned may extend a deferment under subsection (b) or (c) beyond the day referred to in paragraph (1) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate.

In accordance with 10 U.S.C. §6323, Officers: 20 years (2011). (a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President. (2)(A) The Secretary of Defense may authorize the Secretary of the Navy, during the period specified in subparagraph (B), to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than eight years. (B) The period specified in this subparagraph is the period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 and ending on September 30, 2013. (b) For the purposes of this section—(1) an officer's years of active service are computed by adding all his active service in the armed forces; and (2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W-1. (c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title. (d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay. (e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay computed under section 6333 of this title. (f) Officers of the Navy Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485) or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

On 31 August 2011, you signed a Dental Corps Active Duty (2200) Service Agreement (NAVCRUIT 1131/138), acknowledging the following: “I understand that the basic entry age standard for appointment in the active component of the DC is that I be able to attain 20 years of continuous active service by age 62. This entry age standard may be raised to allow 20 years of service by age 68 when a manning shortfall exists in a primary specialty authorized by the Chief of Naval Operations. Age limits may be waived further on a case-by-case basis to reduce manning shortages” and “I may be unable to complete 20 years of active commissioned service prior to reaching the currently prescribed retirement or release from active duty age of 68. I understand that a waiver to remain on active duty beyond age 62 may be requested, prior to reaching age 62, from the Secretary of the Navy. Waiver approval will be based on the needs of the Navy at that time.”

In accordance with 10 U.S.C. §1251. Age 62: regular commissioned officers in grades below general and flag officer grades; exceptions (2021). (a) General Rule.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force (other than an officer covered by section 1252 of this title or a commissioned warrant officer) serving in a grade below brigadier general or rear admiral (lower half), in the case of an officer in the Navy, shall be retired or separated, as specified in subsection (e), on the first day of the month following the month in which the officer becomes 62 years of age. (b) Deferred Retirement or Separation of Health Professions Officers.—(1) The Secretary of the military department concerned may, subject to subsection (d), defer the retirement or separation under subsection (a) of a health professions officer if during the period of the deferment the officer—(A) will be performing duties consisting primarily of providing patient care or performing other clinical duties; or (B) is in a category of officers designated under subparagraph (D) of paragraph (2) whose duties will consist primarily of the duties described in clause (i), (ii), or (iii) of such subparagraph. (2) For purposes of this subsection, a health professions officer is—(A) a medical officer; (B) a dental officer; (C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse; or (D) an officer in a category of officers designated by the Secretary of the military department concerned for the purposes of this paragraph as consisting of officers whose duties consist primarily of—(i) providing health care; (ii) performing other clinical care; or (iii) performing health care-related administrative duties. (c) Deferred Retirement or Separation of Other Officers.—The Secretary of the military department concerned may, subject to subsection (d), defer the retirement or separation under subsection (a) of any officer other than a health professions officer described in subsection (b)(2) if the Secretary determines that such deferral is in the best interest of the military department concerned. (d) Limitation on Deferment of Retirements. (1) Except as provided in paragraph (2), a deferment under subsection (b) or (c) may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age. (2) The Secretary of the military department concerned may extend a deferment under subsection (b) or (c) beyond the day referred to in paragraph (1) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate. (e) Retirement or Separation Based on Years of Creditable Service. (1) The following rules shall apply to a regular commissioned officer who is to be retired or separated under subsection (a): (A) If the officer has at least 6 but fewer than 20

years of creditable service, the officer shall be separated, with separation pay computed under section 1174(d)(1) of this title. (B) If the officer has fewer than 6 years of creditable service, the officer shall be separated under subsection (a). (2) Notwithstanding paragraph (1), in the case of a regular commissioned officer who was added to the retired list before the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, the officer shall be retired, with retired pay computed under section 1401 of this title.

On 12 August 2011, you were issued an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) with a designator code of 2200 (Staff Corps Officer billet requiring Dental specialty) in the active U.S. Navy listing block 12 (Date of Birth) ██████████, block 13 (Permanent grade) LT, block 14 (Permanent grade date) 29 July 2009, block 15 (Present Grade) LT, and block 16 (Present grade date) 29 July 2009. You/witness signed this form on 31 August 2011.

On 1 September 2019, you were appointed to Commander/O-5.

On 23 January 2025, you turned 62.

You were discharged with an Honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 10 September 2011 to 31 January 2025 upon having reached maximum age. Furthermore, block 13c (NET Active Service this Period) listed 13 years, 4 months, and 21 days.

On 3 November 2025, you submitted a rebuttal to the advisory opinion, through counsel, that states in part, "...The general saving statute, 1 U.S.C. § 109, reinforces this principle by providing that the repeal or amendment of a statute does not extinguish "any penalty, forfeiture, or liability incurred" nor any "right accrued" under the prior law unless Congress expressly provides otherwise. The AO never acknowledges this framework, instead treating the absence of a specific grandfather clause as dispositive of retroactivity. That approach is backward. Silence triggers the presumption of prospectivity—not its negation—and the lack of a grandfather clause does not divest previously accrued rights."

"...the AO contends that separation pay constitutes the exclusive remedy. This misreads DoDI 1332.20 ¶ 3.3(b), which authorizes separation pay only where a member "is not entitled to retired or retainer pay under any provision of law." Because ██████████ accrued eligibility under the prior statute, that precondition is unmet, and separation pay cannot substitute for retirement benefits."

You requested to change your record to reflect an entitlement to prorated retired pay, effective 1 February 2025, under the pre-2021 statutory framework. In the alternative, you requested constructive service credit or equivalent equitable relief to restore your retirement eligibility, along with all administrative recalculations and incidental payments arising from the corrected record. In its review of your application and entire record, the Board carefully weighed all potentially mitigating factors, including your assertions. The following facts were considered: You were discharged on 31 January 2025 upon reaching the maximum age; you served a total of 13 years, 4 months, and 21 days; you reached 10 years of commissioned service on 10

