



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 6868-00
7 March 2001

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 February 2001. 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, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve on 30 May 1996. Subsequently, you completed a two week indoctrination course. You claim in your application that you injured your back while performing another two week period of active duty training (ADT). However, you were apparently released from active duty at the end of that second two week period. On 13 September 1999, a physical evaluation board (PEB) found that you were unfit for service with a diagnosis of "Lumbar Syndrome Questionable Herniated Disc". The PEB found that the disability was incurred while you were entitled to basic pay and the disability was a proximate result of performing military duty. Based on the PEB finding you were honorably discharged on 14 October 1999.

Subsequently, you were granted a disability rating by the Department of Veterans Affairs (DVA) and attempted to obtain a 10-point veterans preference. You have submitted the 13 April 2000 letter from the Navy's Human Resource Office denying your request for a preference. The letter states, in part, as follows:

... DVA has confirmed your status as a disabled

veteran, but you have not provided any documents such as a DD-214 which verify active duty in the military services. I understand that your active service consisted of active duty for training (normally two-week tours) and inactive duty (weekend drills) in the Naval Reserve. 5CFR (Code of Federal Regulations) 211.102(b) defines a disabled veteran as a person separated from "active duty in the armed forces" who has a service connected disability. 5CFR 211.102(f) defines active duty as "full-time duty with military pay and allowances in the armed forces...except for service in the Reserve or National Guard." With what you have provided to this point, none of your active service in the Naval Reserve meets the "active duty" requirement of Section 211.102(a) or (b). Reservist or National Guard members normally do not meet this requirement unless they or their unit is called to active duty in war time or national emergency.

Based on these definitions, we cannot assign veterans preference to you for any purpose, as you have not provided any evidence that you served on active duty in the armed forces as required by 5CFR 211.102.

.....

The pertinent portion of the regulation concerning the issuance of a DD Form 214 is enclosed. Paragraph 1.a(2) applies to reservists and requires the issuance of a DD Form 214 to a reservist only when the period of active service was 90 days or more. However, it also states as follows:

The form also will be prepared for personnel being separated for cause or for physical disability, regardless of length of time served on active duty. In the case of disability, the DD 214 will show active duty for only the period for which the member was ordered to active duty for training. The period of hospitalization subsequent to that period may be shown in the "Remarks" block.

There is no evidence in the record, and you have submitted none, showing that your condition on release from active duty for training amounted to a physical disability which would warrant the issuance of a DD Form 214 at that time. Further, you were not found unfit by the PEB until several years after the period of training duty. It appears, that a DD Form 214 is issued to facilitate the receipt of disability benefits from the DVA. However, as indicated you are in receipt of such benefits.

After review of the 13 April 2000 letter, the Board does not believe that you would be eligible for veterans preference even

if a DD Form 214 was issued to you since your service does not meet the active duty requirement of 5 CFR 211.102. Given the circumstances, the Board concluded that the issuance of a DD 214 is not warranted in your case.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board noted that you may be able to adjust your service computation date by presenting copies of your orders which show your periods of annual training.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously 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,

W. DEAN PFEIFFER
Executive Director

Enclosure

BUPERSINST 1900.8
28 JUN 1993

INSTRUCTIONS FOR ISSUANCE OF DD 214,
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY
AND RELATED DOCUMENTS

1. Criteria for Issuance of DD 214. The DD 214 is prepared to cover periods of service on active duty, active duty for training, full-time training duty, active duty for special work, certain periods terminated by a change of status not concurrent with separation from active service, and release from a status that is legally determined to be void.

a. Eligible Personnel. The DD 214 will be issued to:

(1) Personnel Released from Active Duty. The form will be prepared for each member at the time of separation from a period of active naval service as specified below, or a period of service determined to be void. The DD 214 will be provided to officers dismissed under the sentence of a general court martial or dropped from the rolls. (NOTE: Members who are placed on appellate leave are NOT released from active duty. Appellate leave is a statutorily authorized non-pay leave status. Do not, in such cases, issue a completed DD 214. Preliminary preparation of a DD 214 for members placed on appellate leave will be as provided in NAVMILPERSCOMINST 1900.2A.)

(2) Personnel Released from Active Duty for Training, Full-Time Training Duty, or Active Duty for Special Work. The form will be prepared for personnel being separated from a period of active duty for training, full-time training duty, or active duty for special work when the period of service was 90 days or more. The form also will be prepared for personnel being separated for cause or for physical disability, regardless of length of time served on active duty. In the case of disability, the DD 214 will show active duty for only the period for which the member was ordered to active duty for training. The period of hospitalization subsequent to that period may be shown in the "Remarks" block.

(3) Release from Active Duty Following Callup, Partial Mobilization or Full Mobilization. Personnel ordered to active duty in time of National Emergency declared by either the President or Congress, or war declared by Congress will be provided a DD 214 upon release from active duty. The DD 214 will be issued regardless of the length of time served on active duty.

Enclosure (1)

BUPERSINST 1900.8
28 JUN 1993

(4) Personnel Continuing on Active Duty. The DD 214 will be prepared and furnished to members while serving on active duty when they have a change of status or component as follows:

(a) Enlisted Personnel. Discharged to accept permanent appointment to either warrant or commissioned status for continued active duty.

(b) Officers

1. Reserve appointment terminated to accept appointment in the Regular Navy.

2. Temporary appointment terminated to accept a permanent warrant or commission in the Regular Navy or Naval Reserve.

3. Appointment terminated to accept appointment in another branch of the Armed Forces.

4. Upon termination of temporary appointment when enlistment contract expires concurrently.

5. Officers retired and continued on active duty in a retired status will not be issued a DD 214 until the actual date of separation. (For example, an officer placed on the retired list of the Navy on 30 June 1991 and continued for 2 years, will not be issued the DD 214 until 30 June 1993, the actual date of separation.)

(5) Enlisted personnel Released to Become Midshipmen or Cadets. The DD 214 will be issued for enlisted personnel on active duty who are:

(a) Appointed Midshipmen, U.S. Navy (USN).

(b) Appointed Midshipmen, U.S. Naval Reserve (USNR), or accepted as College Program Students in the Naval Reserve Officer Training Corps (NROTC) Program.

(c) Upon acceptance of commission.

(6) Midshipmen and Cadets. The DD 214 will be prepared and issued at the time of release to those midshipmen and cadets, including those serving concurrently as enlisted members, at the Naval Academy, Air Force Academy, Coast Guard Academy, or the Military Academy, released per articles 3640410 and 3640415 of reference (a).