



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

HD:hd  
Docket No: 05949-00  
4 June 2001

CWO3 [REDACTED] USN RET  
[REDACTED]  
[REDACTED]

Dear Chief Warra [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 31 May 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. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 14 and 24 November 2000, copies of which are attached.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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

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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

Enclosures

2-949-00



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1920  
Ser 834D/1078  
14 Nov 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-OOZCB

Subj: FORMER ██████████, USN, RET ██████████

Ref: (a) BCNR memo 5420 Pers-OOZCB of 16 Oct 00  
(b) SECNAVINST 1920.6A

Encl: (1) BCNR Case File #05949-00 w/Microfiche Service Record

1. Reference (a) requested comments and recommendations regarding former ██████████'s request for restoration of his retirement rank to CWO4 and adjustment of his retirement pay. Former ██████████ will hereafter be referred to as "petitioner."

2. The petitioner has requested BCNR action based on the following injustices:

a. During the course of the investigation he was not notified that he was ineligible to retire in paygrade.

b. He satisfied the requirements of his pre-trial agreement, but was further processed for administrative separation.

c. There was no evidence of anything in writing that indicates he should retire as a CWO3.

d. He is willing to serve in the Navy until his statutory service limit is reached.

3. The action requested by the petitioner should be denied for the following reasons, which correspond to the issues presented in paragraph 2.

a. Though his statement is true, he was not being processed for administrative separation during the investigation or judicial proceedings so there was no reference (b) requirement to notify him of his ineligibility to retire in paygrade.

b. This statement is also true, but does not pertain to his separation. His pre-trial agreement was faulty in that he was

Subj: FORMER MBR [REDACTED] USN, RET [REDACTED]

able to fulfill his responsibilities by submitting an unacceptable request. Nonetheless, he was not separated based on his pre-trial agreement. Following the denial of his request to retire in paygrade, BUPERS (PERS-834) concurred that he had completed all actions required by said agreement. However, he had not been processed for administrative separation based on his court-martial conviction as required by reference (b). PERS-834 informed his commanding officer that administrative separation processing was mandatory and that the only way it could be avoided was through submission of a request for retirement in reduced paygrade. [REDACTED] was properly notified that he would be required to appear before a Board of Inquiry. He chose to submit a retirement request rather than attempt to show cause for retention.

c. When his request to retire in paygrade was received, PERS-82 informed the petitioner that he was ineligible to retire at that grade, and further, that time in grade waiver requests are not approved in any cases, misconduct notwithstanding. He chose to submit a request for retirement in reduced paygrade only because he possessed a full knowledge that policy and law precluded retirement in paygrade.

d. His willingness to serve is moot. He was convicted at special court-martial, and willingly submitted a request for retirement in reduced paygrade in lieu of mandatory administrative separation processing.

4. The petitioner maintains that the government violated the terms of his pre-trial agreement and forced an action more severe than he intended when he entered into the agreement. These are two completely separate issues. The terms of the pre-trial agreement were fulfilled when his original request was denied. The request for retirement in reduced paygrade was necessitated by the requirement for a Board of Inquiry to review cases of court-martial conviction where a dismissal is not awarded.

5. PERS-834 Point of Contact is LCDR [REDACTED]

[REDACTED]

LCDR, U.S. Navy  
Head, Officer Performance Branch

5949-00



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1811  
PERS-822  
24 Nov 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

Ref: (a) BUPERS memo 5420 PERS-00ZCB of 17 Nov 00

Encl: (1) BCNR file

1. Reference (a) request comments and recommendation in subject officer's case. Specifically, Petitioner requests a time in grade (TIG) waiver to retire as [REDACTED] effective 1 September 2000.

2. In April 2000, [REDACTED] requested voluntary retirement with a [REDACTED] to retire as a CWO4 vice CWO3 which was disapproved in May 2000. In May 2000, [REDACTED] submitted another voluntary retirement request asking for a next lower grade (NLG) waiver. His [REDACTED] was approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) on 5 June 2000.

3. Due to the fact that SECNAV (MR&A) approved [REDACTED] retirement request in the next lower grade, and that no TIG waivers have been approved in over 2 years, we recommend CWO3 [REDACTED] retired grade and pay remain as CWO3.

4. Enclosure (1) is returned.

[REDACTED]

Assistant Branch Head,  
Officer Retirements