



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

TRG
Docket No: 6237-01
6 September 2002

[REDACTED]

[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 4 September 2002. 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.

In your application, you are requesting that the record be corrected to show that you were eligible for sanctuary protection under the provisions of Title 10 U.S.C. 12686 and were retained on active duty until you reached 20 years of active service and were retired at that time.

You claimed sanctuary in early 2001 believing that you would have accumulated 18 years of active duty by the time your active duty for special work (ADSW) orders ended on 30 September 2001. Subsequently, your orders were modified to reflect an ending date of 8 June 2001 instead of 30 September 2001.

A letter, dated 6 June 2001, from the Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN M&RA) stated, in part, as follows:

.... Although not documented in the Inactive Manpower and Personal Management Information system (IMAMPIS), you were approaching the 16-year mark upon execution of your April 1999 ADSW orders and would have reached sanctuary at the conclusion of your June 27,

2000, to September 30, 2001, orders. Your annual Statement of Service and the IMAPMIS system did not reflect the three years, one month and 18 days of active duty under General recall at the Bureau of Medicine and Surgery from September 18, 1995, to October 31, 1999, which you brought to our attention in March 2001. It appears that "1999" should read "1998".

The ADSW program assigns reserve personnel to augment active duty forces for emergent, unanticipated or short-term projects. OPNAVINST 1001.20B (enclosure 6 to your letter) states: To preclude the possibility of a Reservist reaching sanctuary (18 years), members with 16 or more years of active service (active service, ADSW, Active Duty for Training and Annual Training combined), are not authorized ADSW or one-year recall.

In order to maintain the integrity of the ADSW program and not violate the spirit and intent of ADSW law and policy, it was necessary to modify your orders. Since you will have less than 18 years of active duty service, your release will be voluntary and will not require the approval of the Secretary.

Consequently, you were released from active duty on 8 June 2001. That same day, you wrote a letter to the official signing the 6 June 2001 letter, protesting your release from active duty and contending that your orders could only be terminated for cause. In a 10 July 2001 letter to Senator Warner, ASN M&RA responded to the issues you raised in your 8 June 2001 letter, essentially stating that since you did not have an active duty agreement, the provisions of Title 10 U.S.C. 12313 applied to your case. That provision of law allows the Secretary to release reserve officers from active duty without such an agreement at his discretion. The letter also points out that OPNAVINST 1001.20B specifically prohibits the issuance of ADSW orders to individuals with over 16 years of active duty except in very special circumstances.

The Board has received an advisory opinion to the effect that if you have 18 years of active duty, you should be granted sanctuary. The Board reviewed statements of service dated 22 March 2001, 21 June 2001 and 15 May 2002. In addition, a 5 November 2001 Statement of Service for Naval Reserve Retirement was considered. Although there are minor variations in these documents, it is clear that as of 8 June 2001 you did not have 18 years of active service, and would not have attained 18 years of service by the original ending date of your orders on 30 September 2001. A careful

computation of active service entered on the 15 May 2002 statement resulted in a total of 17 year, 7 months and 12 days of active service as of 8 June 2001. Even if you add the 3 months and 24 days from 9 June until 30 September 2001, you still do not have 18 years of active service.

The Board believed that it was apparently within the discretion of the Secretary of the Navy to modify orders in cases such as yours to preclude an individual from reaching sanctuary. However, this issue is moot because even if the additional period is taken into account, you would still not have 18 years of active duty. The Board concluded that you are not entitled to sanctuary and a correction to your records is not warranted.

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 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