



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

TRG
Docket No: 1091-07
27 June 2008



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 24 June 2008. 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 record shows that on 8 June 1984 you were issued a Notification of Eligibility for Retired Pay at Age 60. On 16 January 1989, you reported for a period of extended active duty. Subsequently, you developed physical problems, and were processed through the physical disability system. After review, the Physical Evaluation Board found that you had a disability rated at 10%. You were given the options of either accepting discharge and disability severance pay or transferring to the Retired Reserve with eligibility for retired pay on 1 November 1996, your 60th birthday. You elected discharge and were honorably discharged on 31 January 1990 with disability severance pay in the amount of \$98,942.40. When you accepted disability severance pay, your eligibility for reserve retired pay was ended.

The record shows that in 1991, the Board denied your request for an increase in your disability rating to 30% and disability retirement. You are now requesting that your record be corrected to show that you were not discharged on 31 January 1990 with disability severance pay but transferred to the Retired Reserve with eligibility for retired pay at age 60. You also point out that since you are not retired, you are not eligible for the recently enacted Combat Related Special Compensation or Concurrent Receipt of Military Retired Pay and Department of

Veterans Affairs compensation. You believe that this lack of eligibility compounds the injustice that has been inflicted in your case.

The Board believed that you made an informed and well considered decision when you elected disability severance pay in 1990, given the amount of the payment and the fact that you would not have been eligible for reserve retired pay for over seven years which certainly provided a reasonable basis for acceptance of disability severance pay. The fact that the law has since changed to allow further benefits for retired servicemembers does not establish a basis for a correction to your record. The Board concluded that you were properly discharged on 31 January 1990 and a correction to your record 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