



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

TRG
Docket No: 1222-07
8 February 2008

[REDACTED]

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 29 January 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.

Your records show that on 10 September 1976 you were transferred to the Temporary Disability Retired List. On 1 August 1978 you were permanently retired by reason of physical disability with 18 years, 9 months and 25 days of active duty. In accordance with the law in effect at the time, your service was rounded up to 19 years for the purpose of computing your retired pay. You then filed a claim with the Department of Veterans Affairs (DVA) and were granted a service connected disability pension which is being offset against your retired pay.

The law changed in 2004 to allow concurrent receipt of retirement and disability pay (CRDP). However, in order to be eligible for CRDP, you must be retired with 20 years of actual service which you do not have. Accordingly, you are requesting that your record be corrected to show that you retired with 20 years of active service.

The Board is receiving many applications from individuals in your situation. In a previous split decision of the Board in a similar case, the dissenting member recommended that the petition of an individual with over 19 years and 11 months of service be denied noting that the situation was no different than that of

thousands of others and that Congress apparently deliberately set the 20 year requirement to prevent individuals in your situation from receiving the benefits of CRDP. He believed that a change in the law was the proper disposition of these cases. The minority recommendation denying a correction to the record was approved by a designee of the Assistant Secretary of the Navy (Manpower and Reserve Affairs). This action was taken with the understanding that it would serve as guidance in future similar cases.

Since you have been treated no differently than many others in your situation, the Board could not find an error or injustice in your case. The Board concluded that a correction to your record was 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