



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

JRE
Docket No. 04052-07
12 September 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 11 September 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 Board found that you were involuntarily ordered to active duty on 29 September 2002. On 4 November 2002, you submitted a request to reenlist in the Marine Corps Reserve (USMCR) for a period of six years. The request was approved on or about 27 December 2002, and you reenlisted for a term of four years on 17 January 2003. Due to apparent administrative error, the enlistment contract indicates that you were enlisting in the Marine Corps rather than the USMCR. You completed a pre-separation counseling checklist on 15 October 2003, in which you

identified yourself as a member of the USMCR. You were honorably released from active duty on 16 October 2003, and issued a DD form 214 which indicates that your service component was "USMCR-KM". You completed your 16th year of service qualifying for reserve retirement on 6 June 2004, but none thereafter. You were honorably discharged on or about 16 January 2003, upon the expiration of your enlistment.

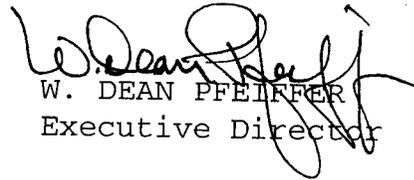
The Board concluded that you reenlisted in the USMCR on 17 January 2003, rather than the USMC, and that you did not have the right to be retained on active duty beyond 16 October 2003. It was clearly your intent to reenlist in the USMCR, and there is no indication in the available records that Headquarters Marine Corps authorized you to enlist in the USMC. In addition, you represented yourself as a member of the USMCR when being processed for release from active duty in 2003, and did not attempt to remain on active duty at that time. As you were not on active duty when you sustained a heart attack in 2006, there is no basis for correcting your record to show that you were retired by reason of physical disability, or discharged with entitlement to disability severance pay.

The Board was not persuaded that it would be in the interest of justice to correct your record to show that you completed 20 years of service qualifying for reserve retirement, rather than the 16 years of service shown in your record. As you were not a member of the Selected Reserve prior to your discharge in 2007, there is no basis for correcting your record to show that you are eligible for reserve retired pay at age 60 in accordance as in accordance with 10 U.S. Code 12731b. In addition, the Board noted that it does not have the authority to direct the Department of Veterans Affairs to grant requests for service connection and/or disability ratings.

In view of the foregoing, 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