




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

  
Docket No. 5077-07  
24 Sep 08

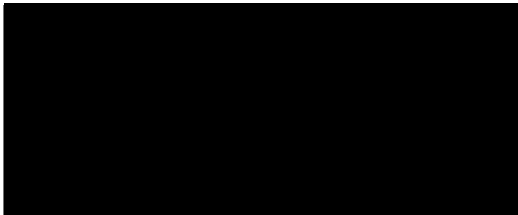
  
  
Dear 

A three-member panel of the Board, sitting in executive session, considered your application on 4 August 2008. A majority of the Board (by a 2/1 vote) recommended that your naval records be corrected as set forth in the attached report dated 10 September 2008. In accordance with current regulations, the designated representative of the Assistant Secretary of the Navy for Manpower and Reserve Affairs conducted an independent review of the Board's proceedings and by his memorandum of 18 September 2008 disapproved the panel's recommended action. A copy of the designated representative's memorandum is also attached.

You are advised that reconsideration of your case will be granted only upon the presentation of new and material evidence not previously considered by the Board and then, only upon the recommendation of the Board as approved by the Assistant Secretary.

It is regretted that a more favorable reply cannot be made.

Sincerely,

  
  
Enclosures



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(MANPOWER AND RESERVE AFFAIRS)  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

September 18, 2008

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

Subj: BCNR PETITION OF [REDACTED]

The recommendation of the Board for Correction of Naval Records, dated September 10, 2008, is disapproved.

I have considered this petition under the provisions of 10 U.S.C. § 1552 and determined that the Petitioner's request does not warrant the relief recommended. Specifically, the Petitioner is not entitled to have his record corrected to show he is entitled to four years constructive service credit (CSC) for his Pay Entry Base Date (PEBD) for completion of medical school.

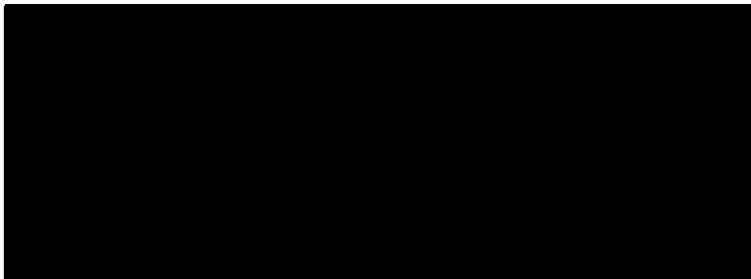
The record shows that Congress passed the Defense Officer Personnel Management Act (DOPMA) in 1980 and that the law became effective on September 15, 1981. As of that date, medical officers were no longer entitled to receive CSC for time spent in medical school for the computation of their basic pay. However, DOPMA included a "grandfather" provision that preserved or "saved" the CSC benefit to medical school students who were already enrolled in the [REDACTED] on the effective date of DOPMA. The Petitioner volunteered to participate in the AFHSP scholarship program by signing an AFHSP scholarship agreement on August 30, 1982, and accepted his appointment as an Ensign thereby entering AFHSP on January 17, 1983. Thus, under any reading of the law, the Petitioner both volunteered to enter and actually entered the scholarship program after the effective date of DOPMA and, so, is not entitled to CSC.

The Petitioner alleges that, as a matter of equity, he should receive CSC despite not being covered by the "grandfather" provision because he was misled by his Navy Medical Program recruiter into believing he would receive CSC as part of his agreement, pointing to outdated recruiting materials and information that did not reflect the DOPMA changes. A majority of the Board agreed with the Petitioner citing an August 2002 statement from his recruiter that purports to corroborate the Petitioner's claim that he was misled. The recruiter's statement is the only addition to the record he presented supporting his 1997 petition on this same claim that the Board denied. I disagree with the majority.

The Board's minority opinion makes several persuasive points. The Petitioner neither volunteered for nor entered the AFHSP scholarship program until after the effective date of DOPMA. According to his own application, the Petitioner was aware as early as September 1994 that his time in the AFHSP was not CSC creditable, yet there is no evidence he sought relief until March 1997. The Board denied that application because it lacked any recruiter corroboration of his claim that he had been misinformed about CSC. To cure that defect, the Petitioner submitted with his present application the August 2002 statement from his recruiter.

However, this statement lacks sufficient indicia of reliability in that the recruiter purports to recall events from 20-21 years earlier and the recruiter qualifies her statement, "to the best of my recollection." It is also noteworthy that the statement was prepared in August 2002 but not submitted to the Board until June 2007, and the Petitioner gives no explanation for the lapse in time between the statement's preparation and its submission. Other cases where the Board granted CSC credit date back over a decade and included corroborating statements that were more contemporaneous with relevant events.

The requested and recommended relief is denied.



SEP 23 2007