



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

TRG
Docket No: 11355-07
20 February 2009

[REDACTED]

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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 18 February 2009. 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.

You enlisted in the Navy on 20 October 1992 for six years. During the period from 4 November 1994 to 11 July 1996 you received nonjudicial punishment on three occasions and received at least three adverse performance evaluations. Your offenses were multiple instances of disobedience, two instances of making false official statements, and several other offenses. The disciplinary actions resulted in a reduction to petty officer second class.

On 3 December 1996 you were honorably discharged with disability severance pay of \$40,341.60. At that time you had completed over 18 years of active duty.

In your application, you are contending that you should have been retired under the provisions of the Temporary Early Retirement Authority (TERA) instead of being discharged with disability severance pay. The authority for TERA was in effect from the start of fiscal year 1993 through the end of fiscal year 2001. Since TERA was a force reduction tool, for most of this period it was not offered to individuals who were being discharged for other reasons. Given the passage of time no other information is available. However, even if it was a discretionary decision, it appears that your disciplinary record would have been a factor in

any decision to only authorize severance pay. The Board was aware that with your length of service and the pay scale in effect in 1996 that you would have received only about \$9,000 a year in retired pay before deductions. It would have taken four or five years to earn the amount you received in severance pay. Therefore, there may have been factors that would have supported a rational decision on your part to accept the severance pay rather than retirement.

Since no other information is available, the Board concluded that you were properly discharged on 3 December 1996 with disability severance pay.

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