



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

TRG
Docket No: 3927-08
28 May 2009

[REDACTED]

[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 27 May 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.

On 24 October 2007 you received nonjudicial punishment (NJP) for defrauding the Navy of basic allowance for housing (BAH) funds in the amount of \$49,037.43. The punishment imposed included a reduction in rate to pay grade E-4, 45 days restriction and extra duty. The imposition of forfeitures of pay was suspended.

Subsequently you requested a 10 month extension of your enlistment so that you could qualify for transfer to the Fleet Reserve. On 21 December 2007, your commanding officer strongly recommended that your request for an extension be denied. He noted that the Naval Criminal Investigative Service (NCIS) had proved that the deception had lasted for at least 29 months, but that circumstantial evidence indicated that the fraud may have occurred for a much longer period of time.

Since you had over 18 years of active service, the regulations required the Chief of Naval Personnel make the decision to deny further service. After review, your request for reenlistment was denied. You were honorably discharged on 5 April 2008 with 19 years, 4 months and 18 days of active service. At that time, you were assigned an RE-4 reenlistment code.

In your application you contend that various service related

illnesses such as post traumatic stress disorder and sleep apnea led to behavioral problems. Because of these problems, your wife decided to live in California while you remained in Virginia. It is clear that the BAH rates were higher in California than in Virginia. You point out that you repaid the excess BAH prior to the NJP.

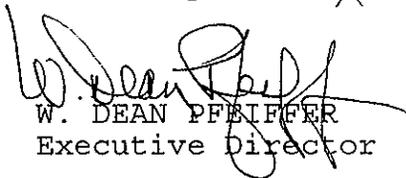
The Board noted that the NCIS and your commanding officer apparently believed that you made a knowing decision to request BAH and knew that you were not entitled to those payments. Further, you have not submitted any evidence to show that you were not responsible for your actions. The Board believed that if a case could be made in defense of the charge that you should have requested a court-martial, however, you accepted NJP. Given the circumstances, the Board concluded that the decision to deny you further service was proper and there has been no abuse of discretion in this matter.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you are eligible for veterans benefits for your various physical and mental problems based on your service in the Navy. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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