



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

MEH
Docket No. 12157-08
9 Jun 09

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

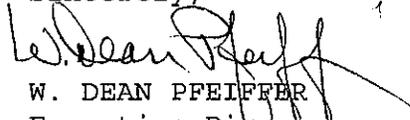
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 June 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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. In addition, the Board considered the advisory opinion furnished by CNRC memo 1133 Ser 32/ of 18 Feb 09, a copy of which is attached and your reply to that memorandum.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In particular, the Board found the following: You previously served on active duty in the United States Navy between approximately 1979 and 1988 as a Data Processor. After a substantial gap in service of about 20 years, in approximately July 2008, at age 49, you sought to enlist in the Master-at-Arms rating. Due to manning requirements at that time, you were only offered and approved for enlistment as an E-5. Thereafter, you sought approval to enlist at the higher pay grade of E-6 vice E-5, but due to manning requirements, the earlier determination to approve you only for enlistment as an E-5 (vice E-6) was once again confirmed. The Board found that you thereafter knowingly and voluntarily accepted the terms of the enlistment that were offered (E-5) by entering into a written enlistment contract on 12 September 2008. There is no evidence that the Navy defrauded you into thinking that you would be enlisted at a higher rate or that you were otherwise mistaken about the terms of the enlistment contract. The Board carefully considered your claim that you had insufficient time to make a decision about whether to enlist.

However, the Board was of the opinion that you had sufficient time to consider your options and to decide whether to enlist as an E-5. Moreover, the Board found that any limit on the time that was available for you to make a decision on your enlistment was attributable to your lengthy gap in service and not attributable to any error or injustice in the enlistment process. The Board noted that you did not reject the enlistment offer as made (as you could have done). Rather, by executing the enlistment contract, you expressly accepted the terms of the enlistment including the provision that you would be enlisted as an E-5. The Board found that by executing the enlistment contract you expressed a willingness and intent to be legally bound by the terms of the contract and found no error or injustice that would warrant changing the enlistment grade now from E-5 to E-6. The Board was of the opinion that the Navy should be entitled to rely on the express promises that you made in your enlistment contract and that it would be fundamentally unfair for you to retroactively change the terms of the enlistment contract after those terms were reduced to a writing and agreed upon. The Board members also considered your request for a personal appearance, however they found that the issues in the case were adequately documented and that a personal appearance would not materially add to the Board's understanding of the issues involved. Accordingly, your application, and your request for a personal appearance before the Board, have 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 only upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is also 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

Enclosure