



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

LCC  
Doc. No. 478-09  
21 Jan 10

[REDACTED]

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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 19 January 2010. 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 CMC 1070 JAM3 of 6 November 2009, a copy of which is attached.

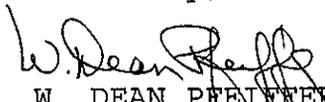
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Under the regulations governing this Board, the burden is on you, the applicant, to demonstrate sufficient evidence of an error or injustice. The documents you submitted do not support your claim that you were underpaid prior to your discharge in 1991. Additionally, the Board noted that the pay error you claim is alleged to have occurred over 19 years ago. Under the rules governing this Board, an application for a correction of a naval record must be made within three years after the discovery of the alleged error. Failure to file within the prescribed three years may be excused in cases where the Board finds that it is in the interests of justice to do so. After careful and

conscientious consideration, the Board found that it is not in the interests of justice to excuse the three year time limit in your particular case. The Board determined that your application should also be barred by the common law doctrine of laches. Laches is a legal doctrine that essentially states that a right or claim will not be allowed if a delay in asserting the right or claim has prejudiced another party. Laches is based on the legal maxim that equity aids the vigilant and not those who procrastinate regarding their rights. In your case, you neglected to assert your claim for an inordinately long period of time without justification. You have provided no evidence as to why you did not seek to have the alleged error corrected earlier. For the reasons stated above, your application has been denied.

After the Board made their determination and prior to the preparation of this letter, you called to inquire about the status of your case and other matters. In response to the questions you raised in that phone call, the following information is provided. The members of the Board that heard your case were Messrs. George, Pfeiffer, Zsalman. The vote of the Board was unanimous to deny. You did not elect to request a personal appearance before the Board, therefore no personal appearance was considered. Your case was reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Further information about those procedures may be found in SECNAVINST 5420.193 and at <http://www.donhq.navy.mil/bcnc/bcnc.htm>.

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 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