



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

WJH: LCC
Docket No. 1521-09
19 Nov 09



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552 received in February 2009.

As you know, in 1987, the Board for Correction of Naval records previously considered an application for a correction of your record. Then, as now, you were seeking constructive service credit for the time you spent in the Armed Forces Health Professional Scholarship program. Review of our records shows that after considering your first application, the Board found insufficient evidence of an error or injustice that would warrant the relief you were seeking.

As you know, the Defense Officer Personnel Management Act, Pub. L. No. 96-513, § 402, 94 Stat. 2835, 2904 (1980) (DOPMA) became effective on 15 September 1981. Students enrolled in the HPSP before that date who later became military medical officers were credited with the time spent in medical school for the computation of their basic pay (constructive service credit). DOPMA ended that benefit as of 15 September 1981. Thus, students entering HPSP after 15 September 1981 are not, under the law, entitled to the constructive service credit benefit enjoyed by their predecessors.

In the late 1980's, some officers, such as yourself, who entered HPSP after 15 September 1981, submitted applications to this Board seeking a change that would show that they entered HPSP before 15 September 1981. If granted, such a change would entitle them to the constructive service credit. Each of those applications was different and each was considered on its own merits. Among the factors the Board used to determine whether

relief should be granted were: Was there reliable evidence that a medical recruiter provided the applicant with erroneous information during the recruiting process? Did the medical recruiter provide specific (but erroneous) information concerning constructive service credit? When did the "recruiting" take place? When did the applicant execute the HPSP scholarship agreement? How central a factor was entitlement to HPSP to the applicant's decision to accept enrollment in the HPSP? Every case presented different fact situations and each case was decided upon the factors specific to that case.

In your case, in 1987, the Board found insufficient evidence of an error or injustice that would warrant a change to entitle you to constructive service credit. The Board noted that you did not sign your scholarship agreement until 29 January 1982, well after DOPMA became the law. Moreover, the documents you submitted did not persuade the Board that your recruiter provided you with erroneous information specific to the issue of constructive service credit or that the entitlement to such credit was a central factor in your decision to accept enrollment in the HPSP. Accordingly, your application was denied.

You were advised, as all petitioners are, that if warranted, your case could be reconsidered upon submission of new and material evidence that would have a direct impact on the prior decision. New evidence is defined as evidence not previously considered by the Board and not reasonably available to you at the time of your previous application. Evidence is considered to be "material" if it is "likely to have a substantial effect on the outcome" of the prior Board's decision.

In February 2009, you submitted evidence that [REDACTED] was one of the "other" students who applied for relief in 1987. Moreover, you advised the Board that you and [REDACTED] "graduated from medical school the same year, had been interns the same year and (you) had the same recruiter [REDACTED]" You also advised the Board that [REDACTED] told (you) that his request had been approved because it had turned out that [REDACTED] was the only medical recruiter in the Navy who would not give a statement that he had provided his recruits pre-DOPMA literature in the fall and winter of 1981."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your recent application on 9 November 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 initial application and related materials, your "new" application of February 2009 together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

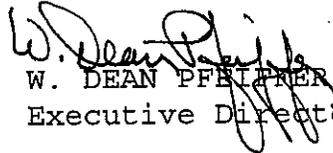
The Board noted that over 20 years have elapsed since your initial application was decided. Under the rules governing this Board, an application for a correction of a naval record must be made within three years after the discovery of the alleged error. This limitation is generally based on the common law legal doctrine that a right or claim will not be allowed if a delay in asserting the right or claim has prejudiced another party. In your case, the neglect in asserting your claim has caused a disadvantage to the Navy in resolving your claim. Among other things, there is no way now to determine the precise reasons that [REDACTED] received relief or to verify the claim that [REDACTED] was the only medical recruiter in the Navy who would not give a statement that he had provided his recruits pre DOPMA literature in the fall and winter of 1981." The Board finds that because the lapse of time has prejudiced the Navy in these respects, it is not in the interests of justice to excuse the delay.

The Board also noted, once again, that you did not sign your scholarship agreement until 29 January 1982, well after DOPMA became the law. Additionally, the Board reviewed, once again, the statement made by [REDACTED] regarding your recruitment. However, as was the case in 1987, neither that statement nor the other evidence in your case was sufficient to persuade the Board that you were provided with erroneous information specific to the issue of constructive service credit or that you regarded any such erroneous information as a central determining factor in your decision to accept enrollment in the HPSP. As for the assertions in your recent application regarding the reason [REDACTED] was provided relief, the Board found that claim could not be substantiated due to the passage of time. Accordingly that claim is not "likely to have a substantial effect on the outcome" of the prior Board's decision. Finally, the Board noted that decisions of the Board in one case are not binding on other Boards and do not have precedential effect on other cases. 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 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