



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

WJH
Docket: 7120-09
8 June 2010

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This is in reference to your application for correction of 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 4 June 2010.

Records reveal that you were discharged from the Naval Reserve in 1955 in order to accept an appointment at the United States Naval Academy. You seek to remove the discharge and to add the time you spent at the United States Naval Academy as creditable time for basic pay purposes. The Board noted that the discharge you seek to remove was issued over 50 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. You have asserted that you were unaware, until recently, that some of your classmates previously sought similar relief (many years ago). The Board carefully considered this claim. However, it is apparent that you were aware that you had been discharged from your reserve status as early as 1955. You neglected to assert any claim pertaining to your discharge for an inordinately long period of time. Under these circumstances, the Board found that it is not in the interests of justice to excuse the three year time limit in your particular case.

Even though the Board determined that it was not in the interest of justice to excuse the three-year time limitation, the panel nevertheless considered, the substantive allegations contained in your application. 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 the Navy Personnel Command letter 1811 PERS 8333 of 28 Jan 2010, a copy of which was previously provided. The Board also considered the comments you made, through counsel, to the advisory opinion.

After careful and conscientious consideration of the entire record, the Board found there was no error or injustice in your discharge from the Naval Reserve in 1955 when you entered the Naval Academy. The Board noted that Department of Defense Directive Number 1300.4 of 3 May 1954, which has been previously provided to you, established a policy that reservists who were entering a service academy (regular component) were to be discharged from the reserve component in order "to prevent such individuals from having dual military status." In the Board's view, that policy was reasonable and it was properly adhered to and executed in your case. The purpose of the Naval Reserve is to establish an available pool of trained reserve personnel that may be called upon to meet emergencies. Naval Reserve members typically train in organized units to fulfill certain specified missions. The Naval Academy is dedicated to developing future uniformed military leaders of high moral and ethical character. Midshipmen serve in the regular component and do not perform reserve drills, training or service. It was reasonable, therefore, for you to be discharged from the reserve component when you entered the Naval Academy. While at the Naval Academy, you were simply not training as a member of the Naval Reserve and not available to be called upon to meet emergencies as a member of the Naval Reserve.

You have asserted that other members of your graduating class who had also received discharges upon entering the Naval Academy, had been afforded dual status. As evidence,

you point generally to cases decided by this Board prior to 1990. The Board gave due consideration to your argument. However, the Board is not bound by the erroneous decisions of prior panels. In the Board's view, any errors made by prior panels in decisions issued many years ago should not be perpetuated in your case. The policy that reservists who were entering a service academy were to be discharged from the reserve component in order "to prevent such individuals from having dual military status" was reasonable and it was properly implemented in your case. Therefore, there is no error or injustice in your 1955 discharge from the Naval Reserve. 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 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