



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

MEH
Docket No. 9600-09
19 Oct 10

[REDACTED]

[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 12 October 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 opinions furnished by BUMED memo 7220 Ser M1/10UM1-2565 of 15 Apr 10, and BUMED memo 1000 Ser M1/10UM1174 of 24 Aug 10, copies of which are attached. The Board also considered your comments made in reply to the advisory opinions.

The Board members also considered your request for a personal appearance before the Board. However, they found the issues in the case were sufficiently documented and that a personal appearance would not materially add to the Board's understanding of the issues involved. Thus, your request for a personal appearance has been denied.

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 opinions. The Board noted that by the summer of 2000, you were an experienced Navy nurse who had successfully completed multiple tours of active duty. Your officer fitness reports show that

you had been stationed in California and Japan. You had served in various nursing positions such as a surgical nurse, ward nurse, and emergency nurse. You had also served as a division officer supervising, at times, up to 30 subordinate personnel. You had completed leadership training and a Navy "Rights and Responsibilities" course. You had also served as a staff education officer, as an additional duty, on multiple occasions.

In late 1999, you applied for a program of advanced education. You were selected for a program that would allow you to pursue advanced educational degrees at Georgetown University that would ultimately lead to a Master of Science in Nursing and a Doctor of Philosophy in Pharmacology (Combined Master of Science/PhD Program). Because of your selection, between approximately the summer of 2000 and the summer 2007, you received full time active duty pay and allowances while pursuing your advanced education at government expense at a prestigious civilian institution. As you know, receipt of advanced education under such a program requires that, upon completion of the course of study, the recipient serve on active duty for a term of obligated service that is reflective of the education received at government expense. You began your studies in 2000. You completed your studies in 2007. More than two years later, in September 2009, you applied to this Board for the first time complaining, essentially, that you "were not given anything in writing" prior to commencing your studies that "specifically detailed the length of service" or the "financial consequences" of receiving the 7 years of education at government expense between 2000 and 2007. You seek to have your obligated service resulting from training reduced and to be granted retroactive bonuses and special pays.

Bureau of Medicine and Surgery Instruction (BUMEDINST) 1520.27 (series) is the regulation that governs full time duty under instruction for Navy Nurse Corps officers. At the time of your accession into your Combined Master of Science/PhD Program, that instruction was publicly and widely available. Indeed, your own application for the Masters in Science/Nurse Anesthesia program (which preceded your later selection for the Combined Master of Science/PhD Program) refers to BUMEDINST 1520.27 and even recounts the formula used for computing the educational service obligation. Your agreement of 10 Sep 1999 states that you agreed to "serve on active duty for a period of 3 years for the first full year of study and an additional 6 months of service for each additional 6 months of study or portion thereof." Notably, under that instruction, the same formula applies to Graduate, Bridge (Registered Nurse to Masters of Science in

Nursing), Doctorate and Fellowship programs. Additionally, the advisory opinion of 15 April 2010 states that you were informed of what your obligations would be when you accepted the Combined Master of Science/PhD Program course of study. Under these circumstances, the Board was satisfied that there was a meeting of the minds prior to your entry into the Combined Master of Science/PhD Program about what your educational course would be and what your service obligation would be. In the Board's view, you knew the term of obligated service that would be required of you after completion of the 7 years of advanced education at government expense. And even if you did not know, you should have.

Moreover, the Board notes that you did not even make application to this Board until two years after you completed all of your studies and had received both of your degrees. Your application points out that, while undergoing your studies, you "requested to be released" from your training pipeline. You have complained that your requests were ignored. However there is no evidence of an application to this Board or other vigorous complaint about your obligated service. You did not invoke any of the formal dispute resolution remedies that are widely known¹ and available to Navy members such as filing an Article 138 or 1150 complaint or making a complaint to the BUMED or Navy Inspector General. Under the rules governing this Board, an application for a correction of a naval record must be made in a timely manner. Failure to file a timely application may be excused only in cases where the Board finds that it is in the interests of justice to do so. This common-sense standard exists because delay in asserting a claim can sometimes cause prejudice to the Navy's ability to fairly resolve a claim.

After reviewing your application, the Board finds that it is not in the interests of justice to excuse the excessive lapse of time in making your application. You knew, or should have known of your service obligations as early as 2000. You did not apply to this Board disputing those obligations until 2009. Your application was first received a full two years after you finished your Combined Master of Science/PhD Program and had received your degrees. You neglected to assert your claim before this Board for an inordinately long period of time. During most of that time, you were in an academic setting pursuing an advanced degree at Navy expense. Because of your

¹ These remedies are part of the core curriculum of the Navy Rights and Responsibilities course.

neglect, the Secretary of the Navy (SECNAV), acting through this Board, was deprived of the opportunity to, perhaps, terminate your Combined Master of Science/PhD Program training (if found to be appropriate) and immediately place you in a non-academic full duty nursing status. SECNAV's inability to shorten your training is directly related to the tardiness of your claim. The Board found that it was not reasonable for you to delay your application to this Board (complaining about the "costs" of your participation in the educational program) until after you had reaped all of the educational "benefits" of your program. In the Board's view, you had ample opportunity to file an earlier application and, therefore, you should bear the consequences of your inaction.

Additionally, the Board carefully considered your request for retention bonuses special pays retroactive to March 2003. However, for the reasons stated in the advisory opinions and above, the Board found insufficient evidence of an error or injustice to warrant relief. Because of the program you were in, you were not entitled to the bonuses and special pays that you have requested.

Under these circumstances and for the reasons stated above, in the Board's view, no relief is warranted. 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 PFIEFFER
Executive Director

Enclosures