



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

DJC
Docket No. 10268-09
23 Feb 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 22 February 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 NPC Memo dtd 16 Dec 09, a copy of which is attached.

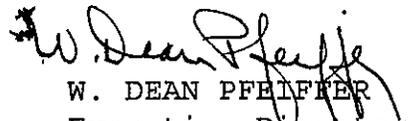
The Board notes that you have applied for a correction to your record for an error that allegedly occurred more than ten years ago. Under the rules governing this Board, an application for a correction of a naval record must be made within three years after the discovery of the alleged error. Failure to file within the prescribed three years may be excused only in cases where the Board finds that it is in the interests of justice to do so.

After careful and conscientious consideration of the entire record, 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 also concurred with the comments contained in the advisory opinion to the effect that your claim should be barred by the the Barring Act. Additionally, the Board found that your application is 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. 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 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