



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

WJH
Docket: 3207-10
13 September 2011

[REDACTED]

[REDACTED]

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 12 September 2011. Your allegations of error and injustice were reviewed in accordance with the 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 the Commandant of the Marine Corps letter 1800 MMSR-5 of 22 July 2011, and Commandant of the Marine Corps letter 1800 MMSR-5 of 14 June 2011, copies of which are attached and were previously furnished to you. The Board also considered your reply to the advisory opinions dated 29 August 2011.

The Board also considered your request for a personal appearance, however it found that the issues in the case were adequately 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

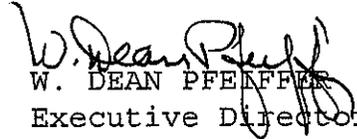
material error or injustice. In this connection the Board substantially concurred with the comments contained in the 22 July 2011 advisory opinion.

The laws and regulations governing claims for retired pay are widely available. In your case, approximately three years ago, you made a timely application for retired pay. Consequently, in accordance with the governing regulations, you retired pay commenced on your 60th birthday. You believe that a process existed at the time to defer the payment of retired pay. You aver that you were misled by a representative of the service who, in your view, mistakenly advised you that no such process existed. You have now asked for a change to the record that would now invalidate your application for retired pay and retroactively stop your retired pay. After careful consideration of your claim, the Board finds that no relief is warranted. You have alleged, essentially, that in 2008 you lacked a full understanding of the laws and regulations governing claims for retired pay. However, in the Board's view, any such lack of understanding does not invalidate the decision you made to request the commencement of retired pay. As a person who deals with the government, you are expected to know the law that governs those relations. The law/regulations are widely available. It was your duty to make yourself aware of them. Your own ignorance about the law is not good cause to invalidate your request for retired pay and now retroactively stop your retired pay. Regarding your conversation with [REDACTED] there is no corroboration for your claim that you were misadvised and no evidence of what he told you. Moreover, even assuming, for the sake of argument, that he misadvised you on a material issue (which is not clear), in the Board's view, still no relief is warranted. The laws and regulations governing claims for retired pay are widely available. Almost three years have passed since you requested retired pay. During that period, you received retired pay benefits and made no effort, until March 2011 to invalidate your request. Under these circumstances, 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 PFEIFFER
Executive Director