



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

WJH
Docket: 3266-10
13 Oct 2010

[REDACTED]

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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 12 October 2010. 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 opinion furnished by the Navy Personnel Command letter 5730 PERS 912 of 30 June 2010, a copy of which is attached. The Board also considered your comments submitted in reply to the advisory opinion.

The Board also considered your request for a personal appearance, however 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 advisory opinion. Records show that after you were passed

over for promotion, in compliance with federal law, you were scheduled to be released from active duty on 30 June 1973. Based on a legal challenge to those laws, a federal court issued an order temporarily restraining the Navy from releasing you from active duty during the pendency of the challenge. You were allowed to continue on active duty between 1 July 1973 and 30 April 1975 over the Navy's objection only because of the federal court challenge and the associated restraining order. That challenge was ultimately resolved in the Navy's favor and on 30 April 1975 you were released from active duty. Under these circumstances, the Board found no error or injustice in the determination that you are not entitled to credit for retired pay purposes for your service between 1 July 1973 and 30 April 1975. 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