



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

JRE

Docket No. 04118-10

16 April 2010



Dear 

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session on 15 April 2010, considered your declaration of 8 August 2007 as directed the United States Court of Federal Claims in an order dated 19 February 2010, and reviewed the administrative record. The Board concluded that your declaration does not establish your entitlement to "active duty pay from October 2000 through mid-May 2001". It noted that the information contained in the declaration is largely uncorroborated, and portions are at variance with other information contained in the administrative record (AR). Your contention to the effect that the provisions of 32 CFR 725.1 et seq prevented you from obtaining and submitting corroborating evidence is erroneous.

Your declaration is not worthy of belief. You have claimed that you were retired on 1 October 2000. You have also claimed that you were not retired on that date, but were retained in a medical hold status and ordered to perform military duties in an active duty status. A Navy medical record dated 23 October 2000 (AR 352) indicates that you "recently retired". You displayed "mild pain behavior", and had an "antalgic" (limping) gait, with strength in your lower extremities hampered by pain with some movements. The report of a Department of Veterans Affairs (VA) compensation and pension examination dated 14 February 2001 indicates that you were "currently unemployed" (AR 330, 331). You had good range of motion in your back, with pain primarily

with rotation. No neurological deficits were noted. You did not claim to have weakness, fatigability, decreased endurance, or incoordination, and the VA physician who examined you did not note any. You initially acknowledged that you were receiving retired pay during the period in question, but later claimed that you were not. You then claimed that you did not realize that the monthly payments you were receiving from the government were payments of retired pay. In various statements you have claimed that you completed necessary medical treatment at the National Naval Medical Center (NNMC) in March 2001, late winter 2001, April 2001 and May 2001. Although you claim you performed duties at the NNMC after your pain decreased in January 2001, you stated in a letter dated 7 July 2001 "Now I am faced with this condition that prevents me from performing any work" (AR 25).

You submitted documents to the Board entitled "DEERS ELIGIBILITY DATA" (AR 51) and an untitled document (AR 52) that contain codes which you contend indicate that you were on active duty after 30 September 2000. One of those codes, "20" actually indicates that you were the "sponsor", i.e., the person through whom your medical care entitlement was derived. A sponsor may be on active duty, in the Fleet Reserve, or retired. You were the sponsor both before and after your transfer to the Fleet Reserve, hence the continued use of the "20" code upon your transfer to the Fleet Reserve. The other code you highlighted, "C" indicates that you were entitled to CHAMPUS, a health insurance program that did not cover medical care expenses incurred by active duty service members for care they received for themselves. The DEERS document (AR 51) you submitted was altered by the removal of the word "RETIRED" which appeared following the words "SPONSOR STATUS" in that form. The word "RETIRED", which vitiates your argument, is still present in the copy of the DEERS form that was provided by the VA (AR 317). If you examine the marks which appear above the "5" and "7" in your Social Security account number in the un-redacted copy of AR 51 which is filed in your Board for Correction of Naval Records (BCNR) file and in the un-redacted copy of AR 317 filed among your VA records, it will be clear to you that AR 51 is an altered copy of AR 317. It is noteworthy that all copies of the DEERS form indicate that you were ineligible for CHAMPUS until 1 October 2000, which is the date of your transfer to the Fleet Reserve.

Available medical records indicate that your back condition was not particularly severe. There is no indication in those records that you needed a wheelchair or that you required a

walker or a cane in order to ambulate. Your contention that you received injections and other treatment for your back condition each weekday for several months is not credible. Available records show that you received a total of three facet injections into your lower back between September 2000 and January 2001, and that you were generally prescribed oral rather than injected or intravenous pain medication during that period. It does not appear that there would have been any need for you to submit to multiple and repeated blood tests to assess or treat your back condition. You would not have required a "green" active duty identification card in order to receive medical care and gain access to facilities at the NNMC, as you would have had such access as a member of the Fleet Reserve. In addition, your name and Fleet Reserve status would have been listed in the DEERS database, which is consulted by medical personnel when there is a question concerning a patient's right to medical care at a military medical treatment facility.

Even if it were to be assumed for the sake of argument that you performed military duties during the period in question, rather than merely being casually present at NNMC from time to time, you would not be entitled to active duty pay or service credit. A service member does not enter on active duty and/or become entitled to active duty pay simply because a Department of the Navy officer or employee orally directs the member to reside in government quarters and/or perform military duties. In the absence of proper authority, such an order would be improper and not binding on the Department of the Navy. If you had been on active duty during the period in question, your entitlement to allowances would have been limited because you were housed and presumably subsisted in government facilities.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. The names and votes of the members of the Board will be furnished upon your request.

Sincerely,


W. DEAN PFEIFFER
Executive Director