



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

BAN
Docket No. 04343-10
29 July 2010

[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 19 July 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.

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. The Board noted that your ADSD and PEBD were administratively adjusted recently in conjunction with your request to transfer to the Fleet Reserve. Although the adjustment was made recently, it is based on your service in the US Army and National Guard prior to 1991. 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 cause prejudice to the Navy's ability to fairly adjudicate the claim. Over time, memories fade, policies change, people move and records are lost or destroyed. A claim should not be allowed when information necessary to fairly adjudicate the claim has been lost due to the excessive passage of time. 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 this claim. You knew of your US Army and National Guard service since 1991. You could and should have identified and problem with your ADSD, PEBD (or your advancement eligibility) earlier. You neglected to assert this claim for an inordinately long period of time without sufficient justification. Because of your neglect, the impact that the ADSD and PEBD error had on the probability of earlier advancement becomes highly speculative. The Navy is unable now to determine with certainty whether you would

have advanced any earlier.¹ The inability to make such determination is directly related to the tardiness of your claim. In the Board's view, you should bear the consequences of your own inaction. Additionally, the Board also noted that you did not actually render service in the higher grades during the periods of times that you are seeking to be credited with a higher grade. Therefore, you should not be entitled to an increase in pay for those periods. Your actual service was in the lower grades. Accordingly, based on all of the circumstances and for the reasons set out above, the Board finds that you have produced insufficient evidence of an error or injustice related to your advancements and your request is 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

Enclosure

¹ All indications are that it is highly unlikely that you would have advanced earlier even if you had identified the PEBD/ADSD error earlier. As you well know, competition for advancement to E-7 and E-8 is very keen. In 2009, for example only 20% of those eligible were selected for E-7 and only 10% of those eligible were selected for E-8. Additionally, records show that in 2005, 2006, and 2007 were board ineligible for E-7, (you passed the E-7 examination; however, your score was insufficiently high enough to be considered by the E-7 advancement board). After your eventual advancement to E-7 in 2008, you would not have been eligible to complete for E-8 until 2011, after your request was approved to transfer to the Fleet Reserve effective 31 October 2010.