



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

JET  
Docket No. NR0762-14  
7 Jul 14

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

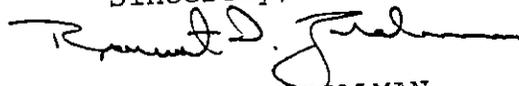
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 July 2014. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 CNO Memo 5400 Ser N133/53 of 27 Feb 14, your rebuttal dated 22 April 2014 to that advisory; and the second advisory opinion furnished by CNO Memo 5400 Ser N133/255 of 13 May 14, a copy of which was furnished to you for your response and which you neglected to respond. Copies of the advisory opinions previously furnished to you are attached.

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 making this determination, the Board concurred with the comments contained in the advisory opinion. In particular, the Board found that there was no error or injustice in the decision to recoup the "unearned portion" of the Nuclear Officer Incentive Pay (NOIP) Nuclear Officer Continuation Pay (COPAY) that you are no longer eligible to receive. You became ineligible to continue receiving the COPAY once you were medically disqualified from submarine and nuclear field duty.

Your application claims that "My qualification was removed for medical reasons, which isn't listed in paragraph 7.f.(1)." However, the Board concurred with the advisory opinion, specifically that per BUPERSINST 1540.41D "Personnel who do not maintain their proficiency as a nuclear trained operator or who, for other valid reasons, are no longer considered suitable for assignment to duty involving supervision, operation, and maintenance of a naval nuclear propulsion plant will have their nuclear NECs or AQDs removed". Removal of your Additional Qualification Designators (AQDs) was an "other valid reasons" because of your medical disqualification. Your medical condition was such that you were deemed not qualified to continue in the position requiring AQD qualification. The Board further noted that per DoD 7000.14-R (Financial Management Regulation) Vol. 7A Chapter 2, "the Secretary of the Military Department concerned has the discretion to, at some point in the process, render a case-by-case determination that the member's repayment of, or the Military Department's full payment of an unpaid portion of, a pay or benefit is appropriate based on one or more of the following: 1. contrary to a personnel policy or management objective, 2. against equity and good conscience, or 3. contrary to the best interest of the United States." The Board found that loss of your AQD justifiably necessitated the recoupment of the unearned portion of your COPAY, and to dismiss the recoupment of the unearned portion would be contrary to the best interest of the United States. 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,



ROBERT D. ZSALMAN  
Acting Executive Director

- Enclosure: 1. CNO Memo 5400 Ser N133/53 of 27 Feb 14  
2. CNO Memo 5400 Ser N133/255 of 13 May 14