



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

JET
Docket No. NR8068-14
4 May 15

[REDACTED]

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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 27 April 2015. 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 CNPC memo 1780 PERS-314 of 23 December 2014, a copy of which is 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. The Post-9/11 Veterans Education Assistance Act (Post-9/11 GI Bill, Public Law 110-252) was signed into law on 30 June 2008 and became effective on 1 August 2009. General descriptions of the essential components of the new law were widely available beginning in summer 2008 and specific implementing guidance was published in the summer of 2009.

Under the governing regulations, to be eligible to transfer benefits, a member must be on active duty or in the selective reserve at the time of the election to transfer such benefits. This is an important feature of the law because the transferability provisions are intended as an incentive vice a benefit. Members who are retired are not eligible to transfer the benefits.

Your application claims "On January 08, 2010, I was still on active duty and I was assisted by my Command Career Counselor HM1(SW/AW) Catherine Llavona and she helped me step by step on how to transfer

my Post 9/11 educational benefits to my dependent (daughter) Brittney D. Vela. After I completed the transfer, I never got a response or clarification from DMDC." You've provided email communication between yourself and Petty Officer Llavona, with her attesting to the fact that she was with you when you used "your" CAC card to enter the Transfer of Education Benefits (TEB) website to transfer your Post-9/11 GI Bill benefits to your dependents. The Board has determined, however, that regardless of who was with you when you claim to have made the transfer of benefits, there is no evidence of you having ever transferred your Post-9/11 GI Bill benefits to your dependents.

Furthermore, the Board found that even there was evidence to show that you had attempted to transfer your Post-9/11 GI Bill benefits to your dependents; you did not meet one of the requirements of the Post-9/11 GI Bill transfer policies. NAVADMIN 203/09 dated 11 July 2009 states, "For those eligible for retirement on or after 1 August 2011 and before 1 August 2012, three years of additional service is required." You retired on 31 January 2012; therefore since you did not have an additional three years of remaining service, you were ineligible to transfer your Post-9/11 GI Bill benefits. 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 evidence within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in this case. 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 J. O'NEILL
Executive Director

Enclosure: CNPC memo 1780 PERS-314 of 23 Dec 14.