



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

JET
Docket No. NR0876-14
10 Sep 14

[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 10 September 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 opinions furnished by HQMC Memo 7220 MPO of 22 Apr 14 and HQMC Memo 7002 MPO of 18 Jul 14, a copies of which are attached and were previously provided. The Board also considered your letter with attachments of 19 May 2014 in response to the advisory opinion of 22 April 2014.

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 opinions. 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. 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.

Evidence shows that you failed to take the steps necessary to transfer benefits. Your application claims, essentially, that "I applied for the education benefit in Nov 2009. I had been forced to retire due to an SRB [Selective Retention Board] held by HQMC [Headquarters Marine Corps] that has since been overturned and my MRD [Mandatory Retirement Date] was reverted back to my original MRD of June 2012. When I originally applied for the benefit was not eligible to transfer the benefit due to my retired status."

In Fiscal Year '09 (FY09), the Secretary of the Navy held a Colonel Selective Retention Board (SRB). Based on that board, you were forced to retire on 1 October 2009. At the time you were forced to retire, you were a part of the RASL (Reserve Active Status List). Because of a civil court case Secretary of the Navy was directed to reconsider his decision made in the FY09 SRB. You petitioned the Board for Correction of Naval Records (BCNR) to consider your case regarding your forced retirement per the FY09 Colonel SRB. The BCNR held a special board to consider the possibility of reversing your forced retirement based on the civilian court decision, and heard your case on 15 February 2013. The Board found in your favor and you were returned to the RASL with your Mandatory Removal Date returned to 1 June 2012, and on that date you were retired.

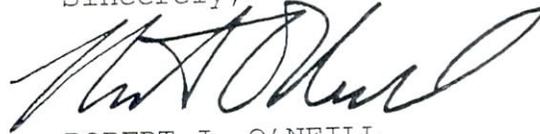
When you were returned to the Reserve Active Status List on 1 June 2012, it was as a member of the Individual Ready Reserve which did not make you eligible to transfer your Post-9/11 GI Bill benefits to your dependents. Serving as a member of RASL, did not allow for you to meet the requirement transferring your Post-9/11 GI Bill benefits to your dependents. You would have had to transfer to active duty or to the Selective Reserve as required by law and policy

Under these circumstances, the Board found that no relief is warranted. 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 J. O'NEILL
Executive Director

Enclosure: 1. HQMC Memo 7220 MPO of 22 Apr 14
2. HQMC Memo 7002 MPO of 18 Jul 14