



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

TRG  
Docket No: 6860-00  
25 July 2001

[REDACTED]

Dear [REDACTED]

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, considered your application on 17 July 2001. 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 found that you reenlisted in the Marine Corps on 21 September 1976 for three years. The next two fitness reports show that you were on the weight control program during the period 1 August 1976 through 31 July 1977. The fitness report for the period ending 31 July states as follows:

... (He) was placed on weight/personal appearance ... at a starting weight of 210 pounds with a goal of 186 to be achieved by 771027. His present weight is 211 pounds with no noticeable improvement in distribution.

On 28 November 1977 you were notified of separation processing by reason of unsuitability due to obesity. An administrative discharge board met on 9 December 1997 and recommended discharge. The fitness report for the period ending 31 January 1978 states that you had a problem controlling your weight and your inability to conform to established standards was due to a lack of initiative and willpower.

On 13 April 1978 the staff judge advocate recommended approval of the recommendation for discharge, but further recommended that

execution of the discharge be suspended for a year. Seven days later, however, the commanding general directed discharge at the earliest practicable date. At that time, you had completed 16 years, 7 months and 21 days of active service. However, you were not discharged but were placed on medical hold pending foot surgery, and you apparently remained in that status for over 18 months. On 1 November 1979, while you were in an overeaters program, you were found physically fit for duty by the Physical Evaluation Board (PEB).

The fitness report for the period 1 August 1979 to 31 January 1980 states as follows:

During this period (he) attended the overeaters program ... from 25 October 1979 - 5 December 1979. His weight when he initially entered the program was 260 pounds and he graduated at 242 pounds. He appears to have a good outlook on life and he presently weighs 216 pounds. His progress is considered excellent and his enlistment is currently extended to 1 July 1980 to enable him to achieve his goal weight of 186 ....

You were apparently extended for an additional period of six months to complete the aftercare portion of the overeaters program.

The next fitness report for the period ending 4 August 1980 states, in part, as follows:

... Although his discharge was approved over two years ago he has remained on active duty for medical reasons. He made steady progress in his attempt to lose weight until the 5th month (May) of his extension when he gained 10 pounds. He continued to gain weight through the month of June and the decision was made to carry out the discharge. While undergoing the physical examination for discharge it was discovered that he had a hernia and an operation was necessary. This operation was performed and he is now on convalescent leave for 30 days ...

On 31 August 1980 the discharge directed on 20 April 1978 was executed. At that time you had completed 18 years, 8 months and 5 days of active service.

In your application you are requesting that the record be corrected to show that you retired from the Marine Corps based on length of service or, in the alternative, that you were retired because of a physical disability. You contend that you did not pursue the disability issue because you thought you had been

extended to complete 20 years of service and there was no final action taken by the PEB. You also contend that you should have been retained because you successfully completed the overeaters program upon completion of 18 years of active service, reached the sanctuary zone. Finally you contend that you were "hoodwinked" into believing you would be permitted to complete 20 years of service.

In reaching its decision, the Board noted that as of 20 April 1978, when your discharge was approved, you had completed less than 17 years of active duty and were only retained after that date, for the most part, because of physical problems. The record shows that you were given every opportunity to comply with the weight standards, but beginning in May 1980 you gained weight. Additionally, even under current regulations, the sanctuary protection granted to those who have accumulated over 18 years of service does not apply to an individual discharged for cause after attaining sanctuary. Since the discharge was approved long before you reached 18 years of service, and you were discharged for cause, the Board found that your contention that you would be entitled to sanctuary protection was without merit. Additionally, the statute which grants such protection 10 U.S.C. §1176a, was not enacted until 1992, well after your discharge. The Board concluded that you were properly discharged by reason of obesity based on the commanding general's directive of 20 April 1978.

Concerning the physical disability issue, the record shows that you were found fit for duty, appealed that finding and made a personal appearance before the PEB, but were again found fit for duty on 1 November 1979. Since you have not submitted any evidence to show that the PEB finding was incorrect, the Board concluded that you were properly found fit for duty.

Finally, the Board could find no evidence in the record that you were "hoodwinked" into believing that you would be permitted to serve for 20 years. Along these lines, there is no indication that anyone with actual or apparent authority ever gave you such assurance.

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,

W. DEAN PFEIFFER  
Executive Director