



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

TRG
Docket No: 10250-02
13 August 2003

[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 6 August 2003. 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.

You enlisted in the Navy on 11 April 1996 with a guarantee for training in the Nuclear Power Program and a potential reenlistment bonus. You successfully completed the program and, on 22 July 1997, you reported to the USS NEVADA (SSBN 733) (BLUE). On 1 September 1998 you reenlisted in the Navy for six years and received a selective reenlistment bonus (SRB) of \$17,988.33. Subsequently, you made several deployments aboard the NEVADA. You were transferred on 12 September 2000.

On 16 April 2001 you requested designation as a conscientious objector. On 10 July 2001 an investigating officer (IO) recommended your classification as a conscientious objector and noted that you were willing to serve in a noncombatant status to fulfill your commitment to the Navy. The IO suggested that one possibility for a noncombatant assignment was a submarine tender, as long as you never had to be part of a security team or a gun mount team. After review, it was determined that you were a conscientious objector. In connection with this review, you continued to request retention in the Navy.

On 13 November 2001 the detailer reviewed your file and

recommended that you be discharged because there were no noncombatant assignments in your rating. Accordingly, on 13 November 2001, the discharge authority disapproved your request for retention in a noncombatant status but directed an honorable discharge by reason of "conscientious objector". The discharge directive also stated that recoupment of the unearned portion of the reenlistment bonus and all other indebtedness was required. You were honorably discharged on 29 November 2001. The payment for your lump sum leave was retained to offset your indebtedness.

In January 2002, the Defense Finance and Accounting Service (DFAS) informed you that you were indebted in the amount of \$7,816.78. You were given the opportunity to pay this amount in installments.

You contend in your application that repayment of the debt is not warranted because your request for retention was favorably endorsed by the chain of command. You believe that the direction for discharge was contrary to regulations and the requirement to repay the indebtedness is unjust.

Concerning recoupment of reenlistment bonuses, the law states that unless an individual is discharged by reason of hardship or disability, the unearned portion of the reenlistment bonus must be repaid. The law does not allow for the waiver of an indebtedness if the payment which led to the indebtedness was proper when paid. The law also allows the Secretary of the Navy or a designee, to remit or cancel any part of an enlisted member's indebtedness which remains unpaid before, or at the time of an enlisted member's honorable discharge.

It is clear from the regulations that the Navy Personnel Command was authorized to direct retention or discharge in cases involving conscientious objectors. It is also clear that you were aware of the applicable regulatory provisions concerning conscientious objectors. Since there were no noncombatant billets for a nuclear trained petty officer, the Board concluded that your discharge was proper and a change in the reason for that discharge is not warranted. Further, there is no basis in the record to support a discharge by reason of hardship or physical disability. Since the amount you owe was proper when it was paid there is no basis for a waiver of the indebtedness.

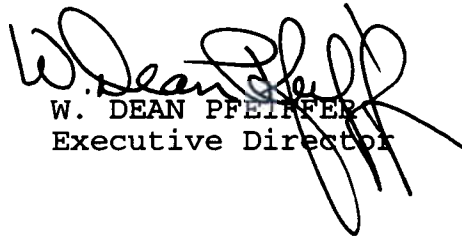
Concerning a possible remission of the indebtedness, the Board noted that the Navy fulfilled its part of the bargain by providing you with an excellent technical education and paying you a reenlistment bonus in exchange for additional service. Although your failure to complete your part of the bargain was unfortunate, the Board did not believe that the circumstances warranted remission of the indebtedness. The Board also noted that the amount you are indebted is very minor when weighed

against the training you received.

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