



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

JLP:ecb
Docket No: 6007-03
29 July 2003

[REDACTED]

Dear [REDACTED]

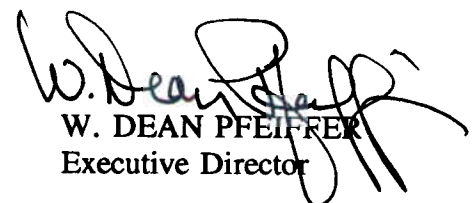
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 July 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. In addition, the Board considered the advisory opinion furnished by PERS memorandum 1780 PERS-604 of 15 July 2003, 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 this connection, the Board substantially concurred with the comments contained in the advisory opinion. 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

Enclosure



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1780
PERS-604
15 Jul 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO
[REDACTED]

Ref: (a) COMNAVPERSCOM (PERS-00ZCB) email of 11 Jul 03
(b) Title 38, United States Code, Chapter 34
(c) Post-Vietnam Era Veterans' Educational Assistance
Act of 1977 (Public Law 94-502)
(d) Title 38, United States Code, Chapter 30

1. The following is provided in response to reference (a):

a. A review of [REDACTED] master record indicates he enlisted in the Navy on 10 December 1976 and entered active duty initially on 15 February 1977 under the Delayed Enlistment Program (DEP).

b. [REDACTED] requests his record be changed to indicate entitlement to Vietnam Era GI Bill (VEGIB) Program benefits. No Board action is required. Per reference (b), because [REDACTED] DEP date was prior to 1 January 1977, his federal education benefit program was the VEGIB Program. [REDACTED] record requires no correction since he was eligible for VEGIB Program benefits. Opportunity to use those benefits ended 31 December 1989, and that cannot be changed. Per references (c) and (d), the Department of Veterans Affairs (DVA) cannot make payments under the VEGIB Program for training pursued after 31 December 1989.

c. [REDACTED] states he was on active duty and was not advised he was losing his entitlement to the VEGIB Program. Reference (c) established the cut-off date for payment of VEGIB Program benefits. Since reference (c) was passed in 1976, we do not know if there was a requirement to inform those eligible of a cut-off date. It is highly unlikely Navy did not publicize this information to Sailors some time between 1976 and 1989. At this time, it's a moot point since DVA cannot make payments under the VEGIB Program for training pursued after 31 December 1989.

d. Per reference (d), VEGIB Program eligibles meeting either of the following requirements are automatically converted the Montgomery GI Bill (MGIB) Program:

Subj: **REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO**
[REDACTED]

(1) As of 31 December 1989, had remaining entitlement to VEGIB Program benefits and served on active duty at any time during the period beginning on 19 October 1984 and ending on 1 July 1985, continued on active duty without a break in service from 1 July 1985 through 30 June 1988 (or 30 June 1987 followed by four years in the Selected Reserve after release from active duty).

(2) As of 31 December 1989, had remaining entitlement to VEGIB Program benefits and was not on active duty on 19 October 1984, and reenlists or reenters on a period of active duty after 19 October 1984 and on or after 1 July 1985 serves at least three years of continuous active duty.

e. [REDACTED] record reflects he served on active duty from 15 February 1977 through 23 April 1986. [REDACTED] reentered active duty on 7 April 1987 and served continuously through 31 March 2003. Since [REDACTED] was on active duty on 19 October 1984, but did not serve continuously through 30 June 1988, he is not eligible for the automatic conversion to the MGIB Program. This was due to his 11-month break in service.

f. The requirements stated in paragraph 1d(2) above were established by the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107-103). It did not affect [REDACTED] since he was on active duty on 19 October 1984. Although this law helped many who were previously ineligible for the automatic conversion to the MGIB Program, those like [REDACTED] who don't meet the stated criteria still are not entitled to MGIB Program benefits.

g. We do not know the intent of Congress when passing the laws setting the date for termination of payment of VEGIB Program benefits or requirements for the automatic conversion to the MGIB Program. Under the current laws, [REDACTED] cannot receive educational assistance under either program.

2. PERS-604's point of contact is Ms. [REDACTED] who can be reached at (DSN) 882-4260 or (C) [REDACTED]

[REDACTED]
Head, Retired Activities and
GI Bill Programs Branch
(PERS-604)