



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

LCC
Docket No. 2904-10
20 Jun 11

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This is in response to your DD Form 149 dated 26 February 2010 and your DD Form 149 dated 9 March 2010 which were received by this Board on 18 March 2010.

Your applications claim, essentially, that you are entitled to additional reimbursement on claims that were previously adjudicated based on your service on active duty between, approximately May 2001 and May 2002.

Under the rules governing this Board, an application for a correction of a naval record must be made within three years after the discovery of the alleged error. Failure to file within the prescribed three years may be excused in cases where the Board finds that it is in the interests of justice to do so. Your application shows some evidence that you made e-mail inquiries about your claim in late 2004, early 2005 and again in summer 2007. You also made a complaint to the DoD Inspector General in late 2009. However, the records show that long stretches of time elapsed between these inquiries. There is no evidence that you have ever submitted a reclaim or appeal to the Defense Office of Hearings and Appeals under section 080702 of the DoD Financial Management Regulations. And no application for correction was received by this Board until March 2010.

Review of the available records in your case has revealed that, due to the passage of time, much of the documentation pertaining to the prior adjudication of your claims for reimbursement no longer exists. The passage of time has adversely impacted on the Board's ability to fully examine the critical records that govern your allegations. A more timely application with this Board would likely have provided the Board the opportunity to retrieve and review those records and resolve

the merits of your claim. However, that opportunity has been lost due to the delay in submitting your application. Under these circumstances, the Board found that it is not in the interests of justice to excuse the three year time limit in your particular case. Additionally, the Board found that your application should be barred by the related common law doctrine of laches. Laches is a legal doctrine that essentially states that a right or claim will not be allowed if a delay in asserting the right or claim has prejudiced another party. In your case, no application was submitted to this Board until March 2010. Over the years between 2002 and 2010, records pertaining to your prior claims for reimbursement have been lost or destroyed, memories have faded and personnel have changed. The delay, which must be attributable to you, has prejudiced the Navy's ability to respond to the issues you have raised in your application. Under these circumstances, the Board found that it would not be appropriate to excuse your delay in submitting an application to this Board.

Notwithstanding the above, to the extent possible, based on existing records, a three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered the allegations contained in your applications on 20 June 2011. 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 CNO memorandum 5400 Ser N130C1/11U0276 of 31 March 2011, a copy of which is attached and was previously furnished to you.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted is 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. The Board agreed with the CNO (Code N130) that documents provided in your application do not support your claims to entitlement to additional reimbursement. 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 also 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