



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

TRG  
Docket No: 4768-01  
8 May 2002

[REDACTED]

[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 30 April 2002. 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.

As the result of two prior actions by this Board, substantial corrective action has been taken in your case. The first action, which was approved on 15 July 1998, resulted in the removal of a nonjudicial punishment and other documentation from your record, and the issuance of an honorable discharge by reason of best interest of the service with an RE-1 reenlistment code.

You reenlisted in the Navy on 23 November 1998 and applied to the Board for additional corrective action. The Board considered your second application on 9 September 1999 and concluded, in pertinent part, as follows:

The Board believes that Petitioner reenlisted in the Navy as soon as possible after he was informed of the Board's action in his case. Given this action, the Board now concludes that further corrective action is warranted. In reaching its decision, the Board notes that without the second NJP, Petitioner's command would probably have let the 24 month agreement to remain on active duty become effective on 4 August 1995. Therefore, the Board concludes that the discharge of 5

July 1995 should be canceled and the record should show that he continued to serve on active duty until he was released from active duty on 3 August 1997 with his service characterized as honorable with an RE-1 reenlistment code.

The Board declines to give him active service until he reenlisted on 23 November 1998 because there is no right to reenlistment or to service beyond that which is obligated in the record.

Concerning the advancement issue the Board notes that it does not direct promotion because it cannot know if an individual is qualified for the higher grade. However, the Board will back date advancements if an individual is advanced at a later date. Notwithstanding the foregoing, the Board will occasionally advance individuals up to pay grade E-3 in an appropriate case. The Board notes that Petitioner was an MNSA on 16 May 1994 and concludes that he would have qualified for advanced to MNSN at some point in his additional service. Although the NJP has been removed from the record, the Board believes that the command would still have had a basis to withhold and delay a recommendation for advancement. Given the circumstances, the Board concludes that Petitioner should be advanced to MNSN as of 16 August 1995, which is the first authorized date after the 24 month extension became effective. In addition, the Board further concludes that with this action, he should have been reenlisted on 23 November 1998 as an SN.

Since your reenlistment you have apparently served in an excellent manner and been selected for promotion to Operational Specialist Second Class (E-5).

In your current application, you are again requesting that your advancement to pay grade E-4 be backdated because you would have been promoted to that grade in the rating you were serving in 1995, which had a 100% advancement opportunity. You also request a correction to show that you reenlisted on 23 November 1998 as an E-4. You want your advancement to E-5 backdated as well. In the alternative, you are again requesting that your reenlistment of 23 November 1998 be backdated to coincide with your discharge on 3 August 1997 so that you have no break in service and that your advancements be adjusted accordingly.

The Board concluded that the two previous actions of the Board provided sufficient relief in your case. In this regard, the Board noted that you only received the additional period of constructive service by action of this Board, and it is only

speculation that you would have been advanced to petty officer during this period. This is especially true since you were only an E-2 at the time. Further you have to be recommended for advancement and complete other requirements in addition to passing an advancement examination. The Board concluded that an advancement to E-4 at an earlier date was not warranted.

It is well settled in the law that there is no right to reenlistment and an individual is only entitled to service until the expiration of enlistment. Since this issue was previously addressed and you have not submitted anything new, the Board concluded that a change in the date of your reenlistment is not 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,

W. DEAN PFEIFFER  
Executive Director