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

TRG
Docket No: 7718-99
3 March 2000

[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 February 2000. 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 were honorably discharged from the Marine Corps on 1 November 1991, after about 13 years of active service, because you had twice failed of selection to major. The DD Form 214 for this period of service is not filed in your microfiche record. However, it is clear that you were paid separation pay. At that time you had accumulated over 18 years of qualifying service for reserve retirement because of five years of enlisted reserve service from 1972 to 1977.

The day after your discharge, on 2 November 1991, you were commissioned in the Marine Corps Reserve and were subsequently promoted to MAJ (O-4). You then earned three consecutive qualifying years for reserve retirement. In the anniversary year ending 12 July 1996 you were only credited with 40 retirement points, and it is not a qualifying year. In subsequent anniversary years you have only been credited with membership points. On 29 October 1998 you were informed that your discharge was required on 1 April 1999 because you had twice failed of selection to LTCOL (O-5) and had completed 20 years of commissioned service. You were honorably discharged on 1 April 1999. At that time you had completed 22 years of qualifying

service but were not eligible for retired pay at age 60 because the last six years of qualifying service were not in the reserve component.

The Board was aware that the requirement that the last six years of service be in the reserve component is temporary and it is scheduled to revert to eight years on 1 October 2000. Therefore, even if you had been granted continuation to complete 24 years of commissioned service in 1999 you could not have accumulated six years of qualifying service by 1 October 2000. The reserve component requirement is set forth in the law and cannot be waived.

In reaching its decision, the Board noted that you were paid separation pay on 1 November 1991 because you could not qualify for retirement. Normally, someone in that position would have about 13 years of total service and would not be close to qualifying for retirement. As indicated, your case is unusual because of your prior service as an enlisted reservist. However, the Board believed that you have been adequately compensated for your service in the Marine Corps. Finally, the Board noted that the requirements for reserve retirement are widely disseminated in the Marine Corps Reserve, and believed that you should have known of the requirement that the last six qualifying years (or eight years) of service must be in the reserve component. The Board concluded that corrective action in your case to establish eligibility for reserve retirement 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