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

CRS
Docket No: 5984-99
27 April 2000

[redacted]

Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 26 April 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. In addition, the Board considered the advisory opinion furnished by Navy Personnel Command dated 31 January 2000, 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

5420
PERS-911
31 Jan 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-OOZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO[redacted]

Ref: (a) BCNR memo 5420 PERS-OOZCB of 19 Jan 00

Encl: (1) BCNR File No. 05984-99

1. Per reference (a), enclosure (1) is returned with the recommendation that [redacted] petition be denied. [redacted]n is requesting to be retired under the Temporary Early Retirement Act (TERA).

2. [redacted] was commissioned in May 1977 and served approximately 14½ years on active duty as a Training and Administration of Reserve (TAR) officer. In 1991, he declined orders to sea duty as an Executive Officer and requested release from active duty. After his release in June 1991, [redacted] affiliated with the Selected Reserve at Naval Air Station, South Weymouth, MA. On 1 December 1992, he was transferred to the Individual Ready Reserve for unsatisfactory participation. We notified him in writing on 10 June 1994 that he must participate in the Naval Reserve or be transferred to an inactive status. He initially responded that he would become an active participant. However, he failed to participate and we subsequently placed him in Standby Reserve-Inactive (USNR-S2) status via Mobilization Disposition Board action where he currently remains. Because he has at least twice failed of selection for promotion and has reached 20 years of commissioned service, he is ineligible to return to an active status because he would immediately be subject to the attrition provisions of law.

3. TERA for TAR officers became effective in September 1993. To qualify for early retirement under TERA, TAR officers are required to have earned at least 15 years of active duty service and have twice failed to selection for promotion. [redacted] had less than 15 years of active service and had

once failed of selection to commander before he was voluntarily released from active duty on 30 June 1991. This was more than two years before TERA became effective. Consequently, he was not eligible for retirement under TERA at the time of his release from active duty.

4. Unfortunately, [redacted] made a career decision in 1991 not to continue on active duty. That decision resulted in his non-qualification for a regular retirement at that time. We subsequently notified him on two occasions of his requirement to actively participate in the Naval Reserve Program. However, he chose not to do so. That decision resulted in his non-qualification for a non-regular retirement at age 60. Accordingly, we regret we must recommend that LCDR Moskevich's petition be denied.

5. My point of contact is CDR A[redacted], PERS-911, at (901) 874-4483.

C. B. LAPORTE
Director, Naval Reserve Personnel
Administration Division