



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

TRG
Docket No: 8264-00
26 December 2001

[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 18 December 2001. 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.

In your application, you are requesting that active duty for special work (ADSW) orders for the period 1 August 1999 to 31 January 2000 be reinstated as originally written. Those orders were terminated on 30 September 1999 to preclude you from reaching 18 years of active duty and eligibility for sanctuary under the provisions of Title 10 U.S.C. 12686. If you had reached sanctuary and requested retention, you could not have been involuntarily released until you qualified for active duty retirement.

After a 19 day break in service, you were issued ADSW orders to expire on 31 December 1999. However, in these orders you were required to sign a waiver of the sanctuary provisions. Since you signed the waiver believing that you did not have 18 years of active duty, you did not contest your release from active duty on 31 December 1999.

Subsequently, you were informed that an error in your service computation had been made and that you actually had 18 years of active service. Apparently in early 2000, the Staff Judge

Advocate to the Commandant of the Marine Corps (SJA to CMC) noted that the law only authorized the Secretary of the Navy to require a waiver of the right to claim sanctuary. Since that authority had not been delegated, it was opined that implementation of that authority by Headquarters Marine Corps might be legally unenforceable.

On 5 October 2000 the SJA to CMC noted that you had accumulated 18 years, 1 month and 6 days of active service and opined that you did not sign a valid waiver of sanctuary protection for the ADSW period from 18 October to 31 December 1999. It was further opined that since you had accepted the break in service, a shortened period of ADSW, signed a sanctuary waiver provision, and voluntarily accepted release from active duty that you were not eligible for sanctuary. The SJA recommended denial of your request for sanctuary unless your skills and expertise warranted recalling you for approximately two years of active duty, thus making you eligible for active duty retirement.

In a letter to you, dated 16 November 2000, the Director, Reserve Affairs Division, HQMC, informed you that your request for orders had been denied and informed you that errors had been made in your service computation. The errors included counting the entire period of your initial ADSW orders from 1 August 1999 to 31 January 2000 as a continuous period of active duty. As indicated, there was a 19 day break in service in that period and the orders ended on 31 December 1999 instead of 31 January 2000, a total of 50 days. The new computation revealed that you had accumulated 17 years, 10 months and 2 days of active service vice the 18 years, 1 month and 6 days previously reported. The Board noted that you have not disputed this computation of your service

The Board believed that it may have been within the discretion of CMC to modify orders in cases such as yours to preclude an individual from reaching sanctuary. However, this issue is moot because even if these periods, totaling 50 days, are taken into account, you would still not have 18 years of active duty. Therefore, the Board concluded that the actions taken by HQMC were proper and you are not entitled to sanctuary.

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