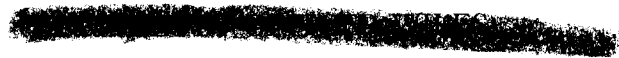




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

LCC:ddj
Docket No: 5301-02
4 September 2002



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 4 September 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. In addition, the Board considered the advisory opinion furnished by NPC memorandum 1811 PERS-823 Ser-073 of 31 July 2002, a copy of which is attached. Also, attached is a copy of the statute which is applicable.

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

Enclosures



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1811
PERS-823
Ser-073
31 July 2002
432-70-4082

From: Chief of Naval Personnel

To: 

Subj: REQUEST FOR DETERMINATION OF HIGHEST GRADE HELD

Ref: (a) Title 10, United States Code, Sec. 6334

1. A review of your service record reveals that in accordance with reference (a) you are not entitled to advancement on the retired list. Since your rank/rating was obtained while in a reserve status you are not eligible for advancement.
2. No further action is needed on your request.



HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1983 Acts. Senate Report No. 98-174 and House Conference Report No. 98-352, see 1983 U.S. Code Cong. and Adm. News, p. 1081.

1994 Acts. House Report No. 103-499 and House Conference Report No. 103-701, see 1994 U.S. Code Cong. and Adm. News, p. 2091.

1996 Acts. House Conference Report No. 104-450, see 1996 U.S. Code Cong. and Adm. News, p. 238.

House Report No. 104-563 and House Conference Report No. 104-724, see 1996 U.S. Code Cong. and Adm. News, p. 2948.

Amendments

1996 Amendments. Subsec. (a). Pub.L. 104-106, § 1503(b)(3), struck out first period after "section 1405" in Formula C under Column 2 in table.

Subsec. (c). Pub.L. 104-201, § 532(d)(2), added subsec. (c).

1994 Amendments. Subsec. (a). Pub.L. 103-337 substituted "the years of service that may be credited to him under

section 1405," for "his years of active service in the armed forces" in Formula C under Column 2 in table.

1986 Amendments. Pub.L. 99-348 designated existing provision as subsec. (b)(1), and in subsec. (b)(1) as so designated, substituted "under this section" for "under this chapter", and added subsecs. (a) and (b)(2).

Effective Dates

1994 Acts. Amendment to this section by section 635(b) of Pub.L. 103-337 to apply to the computation of the retired pay of any enlisted member who retires on or after Oct. 5, 1994, to the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after Oct. 5, 1994, see section 635(e) of Pub.L. 103-337, set out as a note under section 1405 of this title.

Section effective Oct. 1, 1983, see section 922(e) of Pub.L. 98-94, set out as a note under section 1401 of this title.

LIBRARY REFERENCES

American Digest System

Armed Services ☞ 13 to 13.5, 23 to 23.4.

Encyclopedias

C.J.S. Armed Services §§ 5, 29, 80, 82, 104 to 112, 114 to 121, 126.

WESTLAW ELECTRONIC RESEARCH

Armed Services cases: 34k[add key number]
See WESTLAW guide following the Explanation pages of this volume.

§ 6334. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each member of the naval service covered by subsection (b) who, after December 4, 1987, is retired with less than 30 years of active service or is transferred to the Fleet Reserve or Fleet Marine Corps Reserve is entitled, when his active service plus his service on the retired list or his service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to—

- (1) warrant officers;
- (2) enlisted members of the Fleet Marine Corps; and
- (3) reserve members of the Fleet Marine Corps who, at the time of retirement, are on the retired list.

(c) An enlisted member who is on the retired list or retainer pay officer of the retired pay unit if not a multiple pay officer shall receive a retired pay of \$1.

Formula

A

B

¹ In determining the retired pay, in addition to the number of years of service, and disregard any

(Added Pub.L. 108-9, and amended 1989, 103 Stat.

Revision Notes and
1987 Acts. House Report No. 100-446, see 1988 Adm. News, p. 10

1989 Acts. House Conference Report No. 100-446, see 1988 Adm. News, p. 10

American Digest
Armed Services

Encyclopedias
C.J.S. Armed Services

Ch. 571 VOLUNTARY RETIREMENT

- (1) warrant officers of the naval service;
- (2) enlisted members of the Regular Navy and Regul. Marine Corps; and
- (3) reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

(c) An enlisted member of the naval service who is advanced on the retired list under this section is entitled to recompute his retired pay under formula A of the following table, and a warrant officer of the naval service so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

| Formula | Column 1 Take | Column 2 Multiply by |
|---------|---|--|
| A | Retired pay base as computed under section 1406(d) or 1407 of this title. | The retired pay multiplier prescribed in section 1409 of this title for the number of years creditable for his retainer or retired pay at the time of retirement. ¹ |
| B | Retired pay base as computed under section 1406(d) of this title. | The retired pay multiplier prescribed in section 1409 of this title for the number of years credited to him under section 1405 of this title. |

¹ In determining the retired pay multiplier, credit each full month of service that is in addition to the number of full years of service creditable to the member as 1/2 of a year and disregard any remaining fractional part of a month.

(Added Pub.L. 100-180, Div. A, Title V, § 512(b), Dec. 4, 1987, 101 Stat. 1089, and amended Pub.L. 101-189, Div. A, Title XVI, § 1622(g), Nov. 29, 1989, 103 Stat. 1605.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1987 Acts. House Report No. 100-58 and House Conference Report No. 100-446, see 1987 U.S. Code Cong. and Adm. News, p. 1018.

1989 Acts. House Report No. 101-121, House Conference Report No. 101-331,

and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 838.

Amendments
1989 Amendments. Subsec. (a). Pub.L. 101-189, § 1622(g), substituted "December 4, 1987" for "the date of the enactment of this section".

LIBRARY REFERENCES

American Digest System
 Armed Services ¶13.5, 23.4.

Encyclopedias
 C.J.S. Armed Services §§ 80, 114 to 121, 126.