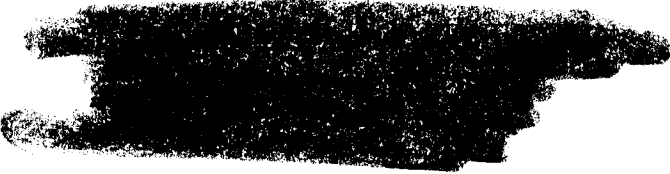




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JLP:ddj
Docket No: 7179-02
29 October 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 29 October 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 CNO memorandum 5420 Ser N133D/000270 of 8 October 2002, 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
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

5420

Ser N133D/
OCT 18 2002

000270

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED]

Ref: SECNAVINST 7220.80E

Encl: Docket Number 07179-02

1. Forwarded, recommending disapproval.
2. On 06 July 1998 then First Class Petty Officer [REDACTED] transferred to a non-submarine assignment with a Projected Rotation Date (PRD) of July 2001 (September 2002 required for continued entitlement to CONSUBPAY). With an Active Duty Service Date (ADSD) of October 1981, High Year Tenure (HYT) for an E-6 was 20 years from member's ADSD, or October 2001 for Chief Gardner since he was an E-6 at the time. At that time his Expiration of Obligated Service (EAOS) was 19 March 2001 and he was not eligible for CONSUBPAY. He executed a four month extension on or about 06 July 1998, ostensibly to obtain the necessary obligated service to match his Soft EAOS (SEAOS) with his PRD, making his SEAOS 19 July 2001.
3. During his shore tour he did not have sufficient OBLISERVE to allow him to be eligible for CONSUBPAY. Additionally, he did not seek a HYT waiver to allow him to move his PRD out to a point that would allow him to be eligible for CONSUBPAY.
4. On 06 July 1998, Chief [REDACTED] signed a page 13 acknowledging he would not receive CONSUBPAY until he signed a qualifying extension. He signed a qualifying extension on 15 September 2000, upon his advancement to Chief Petty Officer, which started CONSUBPAY for him.
5. The intent of CONSUBPAY is to gain commitment to return to sea from those Sailors who can do so. Chief [REDACTED] did not take any action that would have enabled him to return to sea until he was advanced to Chief Petty Officer and agreed to transfer back to sea. At that time, his CONSUBPAY was started to adequately compensate him.

[REDACTED]
Submarine Pay
Program Manager