

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 9598-02 12 September 2003



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 9 September 2003. 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 the Bureau of Naval Personnel, a copy of which is enclosed.

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,

Executive Din

Enclosure

DEPARTMENT OF THE NAVY



BUREAU OF NAVAL PERSONNEL 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

5730 PERS 913 1 Apr 03

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

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

Subj: REQUEST FOR ADVISORY OPINION IN THE CASE OF

Ref:

- (a) BCNR Memo of 25 Mar 03
- (b) BUMED 1tr BUMED:3352:JAH:amc of 11 Jun 62
- (c) CHNAVPERS ltr Pers-E344-KSR:lig of 20 Jun 62
- (d) Eighth Naval District ltr 114/mp of 4 Oct 62
- (e) Record of Naval Reserve Service (NAVPERS 601/11) of 5 Mar 63
- (f) Ex-CPO Simmons ltr of 15 Mar 65
- (g) BUMED 1tr BUMED:3321:FHO:lmh(B) of 28 Apr 65
- (h) Ex-CPO Simmons 1tr of 4 Aug 66
 - (i) CHNAVPERS ltr Pers-B86/CRE:emd 617 09 63 of 18 Jan 67

Encl: (1) BCNR File 09598-02

- 1. Per reference (a), enclosure (1) is returned with the following recommendations and comments concerning Ex-Chief Petty Officer Simmons' request for a retroactive retirement.
- 2. As summarized below, we can find no injustice involved with the way Ex-Chief Petty Officer years of qualifying years for retirement were calculated. Additionally, his inability to attend his Physical Evaluation Board (PEB), as stated in reference (a), is not grounds for payment of retirement benefits. Therefore we do not support his petition for a retroactive retirement.
- 3. As indicated in reference (b), Ex-Chief Petty Officer was found Not Physically Qualified (NPQ) by Chief, Bureau of Medicine and Surgery on 11 June, 1962. Per reference (c), this finding was approved by Chief of Naval Personnel on 20 June, 1962. The authorization to appear before a PEB, reference (d), was forwarded on 4 October, 1962. As indicated in reference (e), discharge by reason of member being NPQ, was affected on 5 March, 1963. At the time of separation, the member had accumulated 17 years 3 months of qualifying service towards a Non-regular retirement.

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- 4. Per reference (f), after his discharge, Ex-Chief Petty Officer requested reinstatement in March, 1965. BUMED disapproved this request (reference (g)), in April, 1965. Per reference (h), after his reinstatement request was disapproved, Ex-Chief Petty Officer requested retirement in August, 1966. This request was also disapproved by CHNAVPERS in January, 1967, per reference (i), since the member had not achieved the necessary minimums for retirement eligibility.
- 5. As evident in the preceding two paragraphs, Ex-Chief Petty Officer was afforded due process and was provided the opportunity to appeal these proceedings. In his current request, Ex-Chief Petty Officer desires an appeal to the decision of the PEB on the basis that his civilian employer did not allow him to attend the PEB hearing in 1963. Reference (d) clearly states that failure to appear before the PEB for any reason revokes the member's authorization to appear before the PEB. We feel that Ex-Chief Petty Officer was as properly counseled and offered all rights and privileges available to him.
- 6. Regerettably, while we appreciate his dedicated service, we cannot support Ex-Chief Petty Officer petition. The Navy met all its requirements and followed proper procedure when this case was originally adjudicated. He was properly discharged, and at the time of separation, was not eligible for retirement benefits.
- 7. Additional questions may be directed to PNCS (901) 874-4508 or DSN 882-4508.