



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

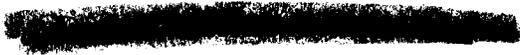
2 NAVY ANNEX

WASHINGTON DC 20370-5100

LCC:ddj

Docket No: 312-99

26 October 1999



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 26 October 1999. 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 BUPERS memorandum 5420 of 23 September 1999, 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

23 Sep 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO CAPTAIN  
[REDACTED]

Ref: (a) BCNR Memo 5420 Pers-00ZCB of 26 Aug 99

Encl: (1) BCNR File No. 00312-99 w/microfiche record  
(2) PERS-06 Memo 1820 Pers-06L2 of 15 Nov 96

1. Per reference (a), enclosure (1) is returned with the recommendation that [REDACTED] petition be denied.
2. [REDACTED] is a Naval Reservist who served as a Naval Reserve Canvasser Recruiter (CANREC) from 22 May 1987 until her involuntary release from active duty (IRAD) on 30 June 1997. As a consequence of her status on temporary active duty as a CANREC, she was ineligible for retirement pay under the provisions of the FY-97 Naval Reserve Full-Time Support Temporary Early Retirement Authority (TERA). In the period since her IRAD and the earlier decisions denying her requests for a TERA retirement, nothing has changed that would currently make her eligible for TERA. CAPT Holloway has attained eligibility for a non-regular retirement at age 60 and continues to accrue retirement points through her participation in the Naval Reserve.
3. Although not the response that CAPT Holloway desired, this recommendation comes as the result of an objective, comprehensive legal review conducted by the Legal Counsel to the Chief of Naval Personnel, enclosure (2), which reiterated the Secretary of the Navy's prerogative to establish TERA eligibility at any level as the service requires. Enclosure (3) of CAPT Holloway's petition was written by the Naval Reserve Recruiting Command's Legal Officer, himself a CANREC, and should not be construed as an objective analysis of the propriety of the TERA program. It is unfortunate that CAPT Holloway found herself the result of a board-directed involuntary separation without eligibility for retirement with pay, but the fact remains that she was knowingly and willingly participating in a non-career, temporary active duty program that held no guarantee of retirement eligibility.
4. The consistent implementation of policy is the foundation of fairness. In the case of CAPT Holloway, the actions taken to determine those CANREC officers for IRAD, to effect their separation, and to determine their subsequent receipt of

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO CAPTAIN

~~CONFIDENTIAL~~  
separation pay or retirement pay were guided by the consistent application of policy.

5. The PERS-9 point of contact for further information is CDR Dave Popowich, PERS-921, at (901) 874-4512.

  
D. A. LEWELLING  
Captain, U.S. Naval Reserve  
ACNPC for Naval Reserve  
Personnel Management