



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

JRE
Docket No: 3509-00
27 July 2001

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 17 July 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. In addition, the Board considered the advisory opinion furnished by Head, Enlisted Promotion Section, Promotion Branch, Headquarters, U.S. Marine Corps, dated 27 October 2000, a copy of which is attached, and the comments of your counsel.

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 concerning your request for promotion.

With regard to your request for an increased disability rating, the Board noted that you accepted the finding of the Physical Evaluation Board that you were unfit for duty because of back pain rated at 10%. The Board was not persuaded that you were unfit for duty because of severe intervertebral disc syndrome (IUDS), with intermittent relief, which is required for a 40% rating under Department of Veterans Affairs (VA) code 5293. It noted that SECNAVINST 1850.4D provides that the application of VA code 5293 is precluded in those cases, such as yours, where there has been surgical excision of the disc, and no evidence of recurrent herniation at the same level. In addition, it noted that there was significant deterioration in your condition following your discharge, which is a matter within the purview of the VA, rather than the Department of the Navy, as disability ratings assigned by the Navy are fixed as of the date of separation.

In view of the foregoing, 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
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1400/3
MMPR-2
27 Oct 00

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

Subj: ADVISORY OPINION IN THE CASE OF [REDACTED]

Ref: (a) Chairman, BCNR JRE:jdh Docket No: 3509-00 of 2 Oct 00
(b) MCO P1400.32B, para 3200.8

1. In reply to reference (a), [REDACTED] was considered for promotion by the CY 1998 Gunnery Sergeant Selection Board (BZ) for Military Occupational Specialty (MOS) 2621 and not selected for promotion. [REDACTED] name was on the list for promotion consideration by the CY 1999 Gunnery Sergeant Selection Board (IZ) for MOS 2621; however, he was discharged from the Marine Corps on 31 May 1999 which was during the session of the CY 1999 Gunnery Sergeant Selection Board. His discharge made him ineligible for promotion consideration ((ref b)). Therefore, his name was deleted from the list of Marines eligible for promotion consideration.

2. [REDACTED] grade at the time of his discharge from the Marine Corps is correct as staff sergeant.

[REDACTED]
Head, Enlisted Promotion Section
Promotion Branch
By direction of
the Commandant of the Marine Corps