



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

JRE
Docket No: 4718-99
20 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 12 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 the Director, Naval Council of Personnel Boards dated 5 January 2001, and the Head, Enlisted Promotions Branch, Headquarters, U.S. Marine Corps. dated 13 March 2001, and the information you submitted in response thereto. A copy of each opinion is attached.

The Board's review of your application was hampered by the fact that you waited almost thirty years to apply for corrective action, and not all pertinent records, such as your complete disability evaluation proceedings and related medical records, can be located. In addition, the Board noted that although you state you discovered the alleged errors and injustice in your records in 1998 or 1999, you were aware of the disparity between the Navy and Veterans Administration ratings in 1970, and you submitted a series of claims for substantial increases in combined VA ratings beginning in 1992. Notwithstanding the foregoing, the Board waived the statute of limitations, and considered your application on its merits.

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 opinions. It was not persuaded that you were entitled to ratings for additional conditions, or higher ratings for those conditions previously rated by the Navy.

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
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1400/3

MMPR-2

13 Mar 01

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

Subj: ADVISORY OPINION IN THE CASE OF FORMER [REDACTED]
[REDACTED]

1. [REDACTED] a retired Marine indicates that he completed his time in service at the grade of probationary corporal and should have been promoted to the grade of sergeant prior to his retirement from the Marine Corps on 22 July 1968.

2. We reviewed [REDACTED] service record book and found official documents that indicate that he failed to meet the required cutting score of 124 for promotion to sergeant for 1 April 1968. His composite score was 122. In order to receive promotion to the next higher grade, a Marine had to meet the required cutting score and be recommended for promotion by his commanding officer for the grade to which appointed. Corporal Guerra was medically retired from the Marine Corps on 22 July 1968 at the highest grade he held, a [REDACTED]. We recommend his petition be denied.

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



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420

Ser: 01-03

5 Jan 2001

From: Director, Naval Council of Personnel Boards
To: Executive Director, Board for Correction of Naval Records
Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER
[REDACTED]


Ref: (a) Chairman, BCNR JRE:jdh DN: 4718-99 ltr of 20 October 00
(b) SECNAVINST 1850.4D

1. This responds to reference (a) which requested comments and a recommendation regarding petitioner's request for correction of his records to show that he was entitled to a 100 percent disability rating at the time of his medical retirement from the naval service in 1968. We have determined that the evidence in this case does not support the petitioner's request for a change to records to reflect entitlement to an increased disability rating.

2. The petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments and recommendations are provided.

a. Petitioner suffered combat wounds (left shoulder, scapula, clavicle, humerus, and right leg) incident to military service in the Republic of Vietnam in January 1968. These injuries resulted in his placement on the Temporary Disability Retired List (TDRL) and subsequent transfer to the Permanent Disability Retired List (PDRL) with a 40 percent disability rating by the Physical Evaluation Board (PEB) in 1970. Since that time, petitioner has reportedly suffered from numerous deteriorative sequellae in multiple systems for which he obtained Department of Veterans Affairs (DVA) evaluations beginning in 1992. These DVA evaluations resulted in petitioner receiving increased compensation from the DVA due to the service connection of his injuries.

b. In the 1996 timeframe, petitioner applied to the DVA contending that the PEB had erred in the disability rating originally assigned to petitioner in 1968. The case file does not contain a copy of the PEB finding that placed the member on the TDRL in 1968. Notwithstanding, the available records (circa 1968-1970) do suggest that petitioner's conditions were properly rated by the PEB in 1970 and were consistent with the physical examination findings noted in the corresponding TDRL evaluation. There appears to be no evidence of a "flail shoulder" - indeed, closer to the opposite - in terms of restricted range of motion. However, even the latter appears to have improved somewhat over that recorded in the initial September 1968 VA compensation and pension physical examination. Petitioner also appears to have made a reasonable occupational adjustment considering the severity of his impairments. Overall, one is left with the impression that a very untoward subsequent turn of events resulted in considerable physical and emotional hardship for petitioner.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER


3. In summary, the evidence in this case is insufficient to warrant a change to the 1970 PEB findings. Accordingly, while denial of the petitioner's request is recommended, BCNR may wish to obtain a second opinion from the Bureau of Medicine Orthopedic Specialty Leader.

