



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

JRE
Docket No: 7496-00
11 June 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 24 May 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 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.

The Board found that you enlisted in the Marine Corps on 27 April 1992. You were the subject of an abbreviated medical board on 19 August 1993, and placed on limited duty because of back pain. You underwent a pre-separation physical examination on 3 August 1994, and were found physically qualified for separation. You were discharged on 9 August 1994 by reason of pregnancy. On 2 March 1995, the Department of Veterans Affairs (VA) awarded you a 10% rating for low back pain and 0% for the residuals of a wrist fracture, both effective from 10 August 1994. The combined rating was increased to 30% on 18 October 1996, and made effective from 10 August 1994.

The Board noted that in order to be entitled to disability separation or retirement from the military services, a service member must be found unfit to perform the duties of his or her office, grade, rate or rating by reason of physical disability. Although you suffered from low back pain during your service in the Marine Corps, there is no indication that is rendered you unfit for duty on 9 August 1994. The fact that you have received a rating from

the VA for that condition is not probative of error or injustice in your case, because the VA made the award without regard to the issue of fitness for military duty. In addition, the Board noted that the rating you received in 1996, although made retroactive to 1994, was based, in large part, on changes in your condition which occurred following your release from active duty. Although the VA may grant service connection and raise or lower ratings throughout a veteran's life time, military disability determinations are fixed as of the date of separation or permanent retirement. 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