



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

JRE
Docket No: 6432-01
10 May 2002

[REDACTED]

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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 25 April 2002. 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.

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 17 July 1995. You had spinal surgery during May 1999 because of a herniated nucleus pulposus. On 6 July 1999, you underwent a pre-separation physical examination. Your spinal condition was evaluated and not considered disqualifying. As you apparently did not want to reenlist in the Marine Corps, you were instructed to seek orthopedic follow-up with the Department of Veterans Affairs (VA). You were considered physically qualified for separation on that date, and you were released from active duty on 16 July 1999. You were assigned a reenlistment code of RE-R1, to indicate that you were fully qualified and recommended for reenlistment. You were evaluated by a VA contract physician on 19 July 1999. He noted that you had subjective symptoms of back pain, but found no signs of radiculopathy, which would be indicative of recurrent disc disease, or significant limitation of motion. Notwithstanding those findings, the VA awarded you a 60% rating under VA cod 5293, effective from 17 July 1999, for pronounced intervertebral disc disease, which is the highest permitted rating for that condition.

The Board was not persuaded that you were unfit for duty at the time of your release from active duty. The fact that the VA awarded you a substantial disability rating is not probative of error or injustice, because the VA assigns ratings without regard to the issue of fitness for duty. In addition, it appears that the rating you were assigned was based on your subjective complaints, rather than objective findings. Had you been found unfit for military duty, it does not appear that the objective findings in your case would have supported a rating in excess of 10%. As you may know, a 30% rating is required for disability retirement.

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