



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

JRE
Docket No. 06064-03
14 October 2003



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 9 October 2003. 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.

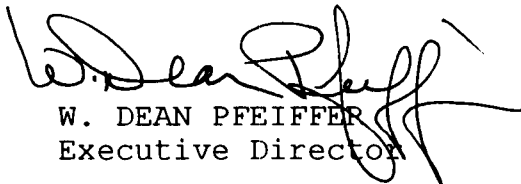
The Board found that you reenlisted in the Marine Corps on 10 December 1973. You were hospitalized on 8 December 1975 for surgical treatment of the residuals of a knee injury you had sustained while playing football. You were released from the hospital to light duty on 6 January 1976. You underwent a pre-separation physical examination on 6 October 1976, and were found qualified for release from active duty. You were released from active duty on 13 December 1976, and discharged from the Marine Corps. On 28 August 1984, the Veterans Administration awarded you a 10% rating for status/post lateral meniscectomy, right knee, with arthritis.

The Board noted that a service member may be separated or retired by reason of physical disability only if he has been found unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. It also noted that military fitness determinations are fixed as of the date of separation or permanent retirement. As you have not shown that you were unfit for duty on 13 December 1976, there is no basis for correcting your record to show that you were separated or retired by reason of physical disability. The fact that the VA has given you a disability for the residuals of your knee injury is not probative of error or injustice in your military record, because the VA awards disability ratings without regard to the issue of fitness for military duty.

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