



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

JRE

Docket No. 00662-07
28 January 2008

[REDACTED]

[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 January 2008. 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 Navy on 15 September 2001. On 9 October 2003, you were the subject of an abbreviated limited duty medical board which recommended, because of your complaints of low back pain, that you be exempted from prolonged standing, running and lifting for a period of six months. You were reexamined on 29 January 2004 and found fit for full duty. On 3 September 2004, after undergoing a low back workup which did not yield any objective signs of low back pathology, you agreed that administrative separation from the Navy was the best option for you to pursue. On 17 September

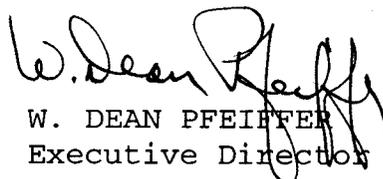
2004, while undergoing a pre-separation physical examination, you indicated that that you did not desire a medical board. On 23 November 2004, you were discharged for the convenience of the government because of a physical condition not considered a disability which interfered with your performance of duty. On 14 March 2006, the Department of Veterans Affairs (VA) awarded you disability ratings of 10% for each knee for patello-femoral syndrome, and 0% for chronic low back pain. On 23 August 2006, based on the results of an examination conducted on 28 September 2005, the VA increased the rating for the back condition to 20%, and made that rating effective from 24 November 2004.

The Board found that while the VA may rate any condition that was incurred in or aggravated by a period of military service, the military departments may assign disability ratings only in those case where a service member has been found unfit for duty. In the absence of evidence which demonstrates that on 23 November 2004 you were unfit to reasonably perform the duties of your grade or rating due to bilateral patello-femoral syndrome and/or chronic low back pain, and that you should have received a combined disability rating of 30% or higher for those conditions, the Board was unable to recommend any corrective action in your case. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board did not consider your request for the upgrade of your discharge from general to honorable because you did not exhaust an available administrative remedy by applying to the Naval Discharge Review Board.

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