



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

JRE
Docket No. 01971-07
22 April 2008



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, in which you requested, in effect, that your record be corrected to show that you were discharged by reason of physical disability, with entitlement to disability severance pay.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 April 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 were evaluated by a medical board on 17 April 2006 and give a diagnosis of chronic low back syndrome, which had not resolved despite multiple treatment modalities, to include medication, physical therapy and chiropractic care. The medical board report indicates that you were 5'8" tall, weighed

220 lbs and appeared to be obese. Examination of the lumbar spine revealed essentially normal range of motion, without palpable spasm, scoliosis or trigger points, and examination of the lower extremities showed no motor or sensory deficit, bilaterally depressed deep tendon reflexes at the ankles, and a negative straight leg raising test. X-rays of your spine were read as normal, and there was no indication for an MRI. The medical board report suggests that there was little, if any, objective evidence of impairment which substantiated your subjective complaints. On 3 May 2006, the Physical Evaluation Board (PEB) made the preliminary finding that you were fit for duty. Prior to making that finding, the PEB considered the medical board report, pertinent medical records, and a non-medical assessment which indicates, in part, that your back pain did not require you to work out of your specialty as a hospital corpsman, and that you had good potential for continued service despite the fact that you were not worldwide assignable and could not complete the physical readiness test or physical fitness assessment. You waived your right to a hearing and accepted the findings of the PEB on 5 June 2006, and your case was finalized by the President, PEB, on 7 June 2006.

On 6 July 2006 your commanding officer advised the Commander, Navy Personnel Command, in effect, that you had undergone reassignment screening and you were precluded from assignments involving prolonged hiking, running, and lifting a heavy pack due to your chronic back pain. In view of that determination and Navy policy, you were then processed for separation by reason of a condition, not amounting to a disability, which interfered with your performance of duty, that condition being your assignment-limiting back pain, rather than your obesity. Although separation processing documents are not filed in your Official Military Personnel File, the Board presumes regularity in your case, i.e., that you were advised of your procedural rights in connection with the proposed discharge, and that you were accorded the rights you elected. An enlisted evaluation report covering the period from 16 March to 4 November 2006 indicates that you were out of body fat standards during that period, and had not participated in a physical fitness assessment. You were discharged on 4 November 2006 for the convenience of the government by reason of a condition, not a disability, which interfered with your performance of duty. It appears that you were granted one-half rather than full separation pay because Sailors who are separated for the convenience of the government are not entitled to full separation pay unless an exception to policy is granted by the

Secretary of the Navy, as provided for in Navy Military Personnel Manual article 1910-040.

The Board was not persuaded that you were unfit for duty by reason of physical disability at the time of your discharge. As noted above, you were found fit for duty by the PEB, you accepted that finding and did not demand a formal hearing. The fact that you were found unsuitable for worldwide assignment because of your back pain, and separated for the convenience of the government because of that limitation, does not equate to unfitness for duty, as service member need not be worldwide assignable to be considered fit for duty. In your case, you were physically able perform the vast majority of the duties of your rate both ashore and at sea.

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.

If you want to apply for correction of your record to show that you were authorized full separation pay, you should complete the enclosed DD Form 149. In addition, if you want to apply for correction of the basis for your separation to a reason other than physical disability, you should complete the enclosed DD Form 293.

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