



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

JRE
Docket No. 05467-07
1 July 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 19 June 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 served on active duty in the Marine Corps from 10 July 2000 to 31 December 2001, when you were discharged by reason of physical disability, with disability rating of 10% for a condition of your left ankle. Effective 1 January 2002, the Department of Veterans Affairs (VA) rated the ankle condition at 10%, and added a 0% rating for a right scapular fracture. The VA added a rating fo 10% for a left knee condition effective 14 August 2006. The VA rating for the ankle condition was temporarily increased to 100% effective 14 August

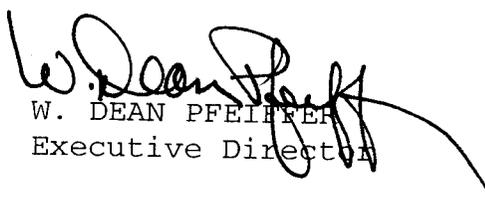
2006, and permanently increased to 20% effective 1 February 2007.

The rating actions taken in your case by the VA following your discharge do not demonstrate that you should have been retired by reason of physical disability, vice discharged with entitlement to disability severance pay. In this regard, the Board noted that the VA assigns disability ratings without regard to the issue of fitness for military service, and it may modify and/or add disability ratings throughout a veteran's lifetime. The military departments, unlike the VA, are permitted to rate only those conditions which render a service member unfit for duty, or contribute to an unfitting condition. In addition, ratings are fixed as of the date of separation or permanent retirement, absent evidence of material error or injustice and favorable action by the Board.

As you have not demonstrated that your ankle condition was ratable at 30% or higher on 31 December 2001, or that you had any other ratable conditions at that time, there is no basis for recommending 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.

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