



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

JRE
Docket No. 07123-07
22 September 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 11 September 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 sustained an ankle injury during January 2006 while playing basketball. The condition was evaluated by a physician on 14 February 2006 and assessed as an ankle sprain. It was subsequently diagnosed as a partial tear of the deltoid ligament. You underwent a pre-retirement physical assessment on 23 June 2006, and were considered physically qualified for retirement, notwithstanding your ankle condition, tinnitus, wrist pain and recurrent back pain. You were released from active duty on 31 October 2006, and retired on 1 November 2006.

On 26 February 2007, the Commander, Naval Operational Medicine Institute, advised the Commandant of the Marine Corps (CMC) that based on "the flight physical examination of 23 June 2006", you were not physically qualified for all duty involving flying because of a deltoid (ligament) ankle sprain, right ankle, with failure to heal. The condition was considered permanent, and based on the recommendation of a flight surgeon and review by "NAMI-342", a waiver was not recommended. On 28 February 2007, CMC advised you that you were disqualified from all duties involving flight, and that a waiver could not be granted by CMC.

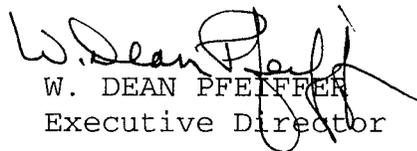
The Board concluded that although you sustained an ankle injury during your final year of active duty service which ultimately resulted in your being disqualified from all duties involving flying, you have not demonstrated that you were unfit to reasonably perform active military service when released from active duty on 31 October 2006 or that your release was erroneous or unjust. As indicated in enclosure (12) to your application, the Disability Evaluation Manual provides that physical disqualification from special duties such as flying does not necessarily imply physical unfitness, and that referral to the Physical Evaluation Board (PEB) is appropriate only in cases where the member's ability to reasonably perform active military service is in doubt. The Board determined that you have not established that you should have been retained on active duty for further evaluation or treatment of your ankle condition, or for consideration of your case by a medical board or the PEB. The fact that you did not know you were being considered for disqualification from flying duties at that time does not warrant setting-aside your release from active duty or granting any of your other requests.

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 PFENFFER
Executive Director