



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

JRE
Docket No. 08289-07
29 July 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 July 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 27 November 2001 to 29 August 2002, when you were discharged by reason of a condition, not a disability, which interfered with your performance of duty. The condition was a dysfunctional anterior cruciate ligament (ACL), right knee, status post partial tear, which existed prior to your enlistment, and patellofemoral syndrome, which developed as a result of the pre-existing ACL condition. On 5 January 2007, the Department of Veterans Affairs (VA) determined that your

knee condition was aggravated by your naval service, and assigned you a disability rating of 0%.

Your receipt of a 0% disability rating from the VA is not probative of the existence of error or injustice in your naval record, because it was assigned without regard to the issue of your fitness to perform military duty. As you have not demonstrated that you were unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability that was incurred in or aggravated by your naval service, 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.

If you believe you are entitled to an decoration which is not listed in your DD Form 214, you should submit a request for that decoration to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132.

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