



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

JRE
Docket No. 09791-07
22 September 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 18 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 served on active duty in the Marine Corps from 10 March 1987 to 18 May 1988, when you were discharged by reason of physical disability, with entitlement to disability severance pay, due to patellofemoral pain, which was rated at 10% disabling by reason of aggravation of a pre-existing condition. The Department of Veterans Affairs (VA) rated the condition at 10% effective 25 May 1990, and confirmed that rating on 27 September 1993. On 20 September 1996, the VA added 10% ratings for bilateral hip conditions thought to be secondary to the knee condition. The VA subsequently increased

the individual ratings for the knee and hip conditions to 20% effective 25 May 1990, for a combined rating of 50%.

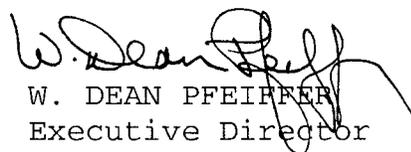
Your receipt of a combined VA disability rating of 50% effective 25 May 1990 is not probative of the existence of error or injustice in your naval record. In this regard, the Board noted that the military departments were permitted to rate only those conditions which rendered a service member unfit for duty, or contributed to an unfitting condition and warranted a separate rating. The rating you received from the Department of the Navy was based on your condition at the time the rating was assigned. The rating is fixed as of the date of your discharge from the Marine Corps. Unlike the military departments, the VA may rate any condition it determines was incurred in or aggravated by a period of service, or is secondary to a rated condition. The VA assigns ratings without regard to the issue of a veteran's fitness for military duty vis-à-vis the conditions being evaluated. In addition, the VA may amend ratings at any time it determines there has been a significant improvement or worsening of a rated condition, and it may add ratings for new conditions that are considered secondary to a rated condition, as in your case, where you received ratings for bilateral hip conditions more than eight years after you were discharged.

As you have not demonstrated that your knee condition was ratable at 30% or higher on 18 May 1988, or that you had other ratable conditions at that time, 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.

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