



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

JRE
Docket No. 09908-07
22 August 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 21 August 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. In addition, it considered the comments of your counsel.

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.

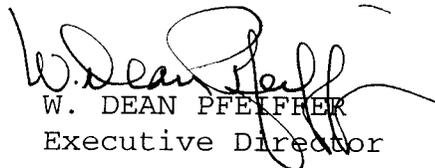
The Board found that you were the subject of a medical board which convened on 25 March 1993, to report evaluate the residuals of a shoulder injury you had sustained approximately seven years earlier. The medical board report indicates that the residuals of the injury prevented you from doing any pull-ups. The medical board report was referred to the Physical Evaluation Board (PEB), which considered your case on 1 June 1993. The PEB determined that you were fit for duty. You disagreed, and requested that you be accorded a personal appearance hearing. On 12 July 1993, your request for a hearing was denied. You were discharged from the Marine Corps on 12

December 1993, at the expiration of your enlistment. It appears that you were not permitted to reenlist at that time because you were unable to pass the Marine Corps physical fitness test (PFT) because of your shoulder condition. Following your discharge, the Department of Veterans Affairs (VA) awarded you disability ratings of 20% for the shoulder condition, and 10% for hypertension.

The Board found that your receipt of disability ratings from the VA is not probative of the existence of error or injustice in your military record, because the VA assigned those ratings without regard to the issue of your fitness for military duty at the time of your separation from the Marine Corps. It appears that you were capable of performing your duties as an air traffic controller in an outstanding manner, and would have continued to do so had you been permitted to reenlist. The Board concluded that your inability to pass the PFT and resulting denial of reenlistment did not provide a basis for finding you unfit for duty and granting your request for disability retirement. 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