



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

JRE
Docket No. 02149-08
24 October 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 23 October 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 19 May 1997 to 18 May 2001, when you were released from active duty and transferred to the Marine Corps Reserve (USMCR). You were discharged from the USMCR on 5 May 2005 at the expiration of your statutory service obligation. You reenlisted in the USMCR on 7 December 2006 for a term of one year. It appears that your enlistment was fraudulent, in that you failed to disclose your history of a herniated nucleus pulposus, chronic back pain and a Department of Veterans Affairs

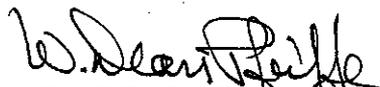
(VA) disability rating of 40% when you completed a Report of Medical History in conjunction with your pre-enlistment physical examination, which was conducted by a civilian contract physician on 21 November 2005. You were mobilized for service in Operation Enduring Freedom for the period 9 January-30 November 2006 by orders dated 12 January 2006. The orders directed that you report any condition that would prohibit, hamper or preclude the execution of the orders so that the medical department representative could determine your qualification for service. You were advised further that if you did not meet Marine Corps standards, you were to return the orders to your parent command without executing them. On 4 February 2006, you sought medical care for low back pain and "slipped discs". You reported that earlier that day, you had sneezed and your back "slipped out". You also reported your history of a herniated nucleus pulposus, L-5-S-1, and former entitlement to a VA disability rating of 40%. You were given diagnoses of chronic lumbago and history of herniated nucleus pulposus, and recommended for demobilization without referral to a medical board. You were released from active duty on 17 March 2006, and discharged from the USMCR on 6 December 2006 at the expiration of your enlistment.

The Board was not persuaded that you were unfit for duty by reason of a physical disability that was incurred or aggravated by your service in the USMCR, and therefore entitled to disability separation or retirement. As noted above, your lower back conditions existed prior to your enlistment in the USMCR, which you procured through fraud. It is unlikely that you would have been entitled to disability separation or retirement even if there had been no fraud, as there is no credible evidence that your condition increased in severity beyond normal progression during your brief period of active service in 2006. 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