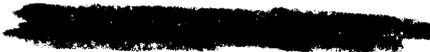




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 03957-08
11 May 2009



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 30 April 2009. 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 enlisted in the Marine Corps on 24 July 2002. In 2006 you were diagnosed with cancer of the left testicle with metastases to the liver and lungs. The testicle was removed surgically, and you underwent chemotherapy, which was apparently successful, as your health improved and there was no recurrence of the cancer. You were released from active duty on 5 June 2007 and transferred to the Marine Corps Reserve. On 10 December 2007, the Department of Veterans Affairs (VA) granted you service connection and disability ratings of 0% for testicle cancer, and metastatic liver and lung cancer.

In order to be separated or retired by reason of physical disability, a service member must be unfit to reasonably perform

the duties of his office, grade, rank or rating by reason of disability. Although you suffered from cancer during your period of active duty service, it was apparently in remission at when you were released from active duty, and there is no indication in the available records that you were unfit for duty at that time. The fact that the VA awarded you service connection and non-compensable disability ratings for several conditions is not probative of the existence or error or injustice in your naval record because the VA took those actions without regard to the issue of your fitness for military duty as of 5 June 2007.

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,



ROBERT D. ZSALMAN
Acting Executive Director