



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

JRE
Docket No. 05692-08
10 June 2009

[REDACTED]

Dear [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 4 June 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.

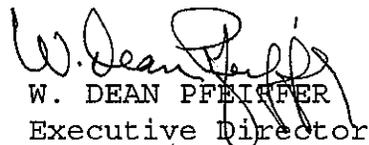
The Board found that you enlisted on 30 November 1967. You sustained a wound to your right, dominant hand on 19 September 1968. While home on convalescent leave during December 1968, a private osteopathic physician examined you and stated that he believed you would be able to return to full duty not to include combat duty. On 28 March 1969, the Physical Evaluation Board (PEB) found you unfit for duty by reason of ankylosis of the right middle finger, which it rated at 10% under Veterans Administration (VA) code 5226. A letter dated 1 April 1969 from the Senior Member, PEB, Headquarters, U.S. Marine Corps, to your

battalion commander, indicates that you accepted the findings of the PEB, and that you signed a statement that you did not demand a "full and fair" (oral) hearing. You were placed in a home awaiting orders status on that date, and acknowledged that you would be separated or retired by reason of physical disability upon the completion of final action on your disability proceedings. On 7 May 1969, the Physical Review Council determined that you were fit for duty, and referred your case back to the PEB for appropriate action. On 23 May 1969, the PEB confirmed the finding of unfitness and previous rating of 10%, and added a 10% rating under VA code 7804 for a painful scar, right thumb. The revised findings were approved by the PRC on 10 June 1969, and you were discharged with entitlement to disability severance pay on 27 June 1969.

The Board did not accept your unsubstantiated contention to the effect that you were not advised of your "rights and options" prior to your discharge. As noted above, you accepted the initial findings of the PEB, waived your right to a hearing, and acknowledged that you would be separated or retired by reason of physical disability. Accordingly, as you have not demonstrated that you were entitled to a combined disability rating of 30% or higher from the Department of the Navy, 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