



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

JRE
Docket No. 06051-08
20 July 2009

[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 9 July 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. The Board was unable to obtain your Navy and Department of Veterans Affairs (VA) medical records and VA rating decision(s) from the VA, which has custody of those documents.

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.

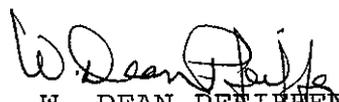
The Board found that you enlisted in the Marine Corps on 8 August 2006 after receiving waivers of disqualifying conditions of your knees. On 19 December 2007, the Physical Evaluation Board (PEB) determined that you were unfit for duty because of a condition of your right knee that was related to an in-service injury, and was ratable at 10%. The PEB determined that a condition of your left knee was not ratable because it existed prior to your enlistment and was not aggravated by your naval

service. On 7 January 2008, you signed a document in which you requested that the PEB reconsider its findings, and stated that in the event the findings remained the same, you did not desire a formal hearing. You also indicated that you understood that your case would be finalized at that point. You signed another document on 8 January 2008 in which you demanded a formal hearing. Both documents were faxed to the PEB on 11 January 2008. On 24 January 2008, the PEB reconsidered and confirmed its previous finding. The findings of the PEB were approved on 8 February 2008, and you were discharged with entitlement to disability severance pay.

Although the evidence of record is equivocal, the Board presumes that you waived your right to a formal PEB, and that your case was properly finalized by the President, PEB. In addition, it concluded that you failed to demonstrate that the condition of your right knee was ratable at or above 30% disabling, or that your left knee condition was incurred in or aggravated by your naval service and that you were entitled to a combined disability rating of 30% or higher for the bilateral knee conditions. 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