



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

JRE

Docket No. 06657-08

10 July 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 11 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. In addition, the Board considered the advisory opinion furnished by Commandant of the Marine Corps dated 27 January 2009, a copy of which is attached.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In addition, the Board concluded that you failed to demonstrate that you were unfit for duty by reason of physical disability on 1 March 2003, or that it would be in the interest of justice for it to excuse your failure to undergo a final periodic physical examination.

Although you state you discovered the alleged error in your case in 2007, the Board believes that you were aware of the circumstances of your discharge much earlier. In this regard,

it noted that on 15 April 2003, you advised the Department of Veterans Affairs (VA) of your marriage and the birth of a child, and requested that you wife, child, and a stepchild. Presumably you would have notified the Marine Corps of your newly acquired dependents if you had believed that you were still in a member of the Marine Corps so that they would be entitled to military medical care and other benefits as dependents of a military retiree. The Board also noted that on 17 June 2003 the VA was notified that you had been discharged from the naval service without entitlement to disability severance pay.

The Board did not accept your contention to the effect that your record is erroneous or unjust because you notified unnamed officials of Headquarters, Marine Corps of your change of address. The Board concluded that the presence of your address in documents the Department of Veterans Affairs (VA) provided to the Marine Corps did not relieve you of the responsibility of ensuring that appropriate Marine Corps officials were notified of your correct address, and that you underwent a final periodic physical examination.

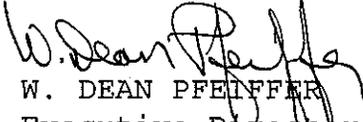
Your contention to the effect that you were entitled to be permanently retired in 1998, rather than transferred to the Temporary Disability Retired List (TDRL) is clearly erroneous. There are no provisions of law or regulation that require the permanent retirement of a service member who has been assigned a disability rating of 30% or higher. Given the paucity of objective evidence of impairment associated with your condition, it appears that you were found unfit for duty and transferred to the TDRL as a precautionary measure because your condition had the potential to become much more severe; however, there was also the possibility that the condition would continue to improve, as suggested by the return of normal strength in your right arm which is noted in your medical board report, in which case it is likely that you would have been found fit for duty.

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,


W. DEAN PFEIFFER
Executive Director