



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

JRE
Docket No. 07479-08
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, in which you requested that your record be corrected to show that you were retired by reason of physical disability, vice discharged at the expiration of your enlistment.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 May 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.

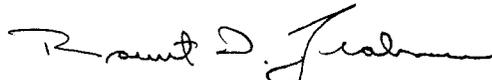
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, the Board noted that in order to be separated or retired by reason of physical disability, a service member must be unfit to reasonably perform the duties of his office, grade, rank or rating by reason of physical disability. In your case, you recovered from spinal surgery and were found fit full duty prior to your separation. That you were not permitted to reenlist because you failed to meet applicable weight and body fat standards does not demonstrate that you were unfit for duty. Similarly, your

receipt of disability ratings from the Department of Veterans Affairs (VA) for degenerative disc disease (20%) and tinnitus (10%) is not probative of the existence of error or injustice in your naval record, because the VA awarded those ratings without regard to the issue of your fitness for military duty.

As you have not demonstrated that you were unfit for duty at the time of your discharge, the Board was unable to recommend any corrective action in your case. 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,



ROBERT D. ZSALMAN

Acting Executive Director