

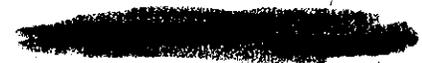


DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE

Docket No. 12093-08

8 April 2010



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 8 April 2010. 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 enclosed advisory opinion furnished by the Commandant of the Marine Corps dated 20 October 2009, and your response thereto.

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.

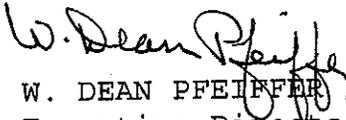
You were ordered to active duty as a member of the Marine Corps Reserve on 8 November 2002 for a period of 179 days to serve as a recruiter aide. On 29 November 2002 you were stabbed in the chest, which resulted in a partial collapse of your left lung, and require your hospitalization until 1 December 2002. You were examined on 27 December 2002 and found to be physically qualified. Your history of a "5% PTX", i.e., partial pneumothorax (lung collapse), and residual diminished sensation at the site of stab wound were not considered disqualifying. You were released from active duty by reason of completion of

required service on 14 February 2003. You were assigned a reentry code of RE-A1, to indicate that you were qualified and recommended for reenlistment. You were placed in a limited duty status effective 21 July 2003 because of residual chest pain, status-post stabbing and resolved pneumothorax. You were permitted to perform inactive duty training (drills), but were exempted from lifting, running, and doing sit-ups and pushups. You were transferred to the Individual Ready Reserve (IRR) effective 15 August 2003 in accordance with your request. You completed your eight-year statutory service obligation effective 5 May 2004.

Your receipt of disability compensation from the Department of Veterans Affairs (VA) effective 15 February 2003 is not probative of the existence of error or injustice in your naval record because the VA awards disability ratings without regard to the issue of a veteran's fitness for military service on the effective date of the veteran's disability ratings. As you have not demonstrated that you were unfit to reasonably perform the duties of your rank on 14 February 2003, when you were released from active duty, or on 15 August 2003, when you were voluntarily transferred to the IRR, 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

Enclosure