



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

JRE

Docket No. 01304-08

12 December 2008



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 December 2008. 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.

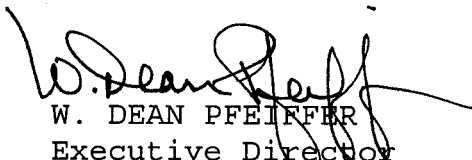
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you served on active duty in the Marine Corps from 1 April 2000 to 31 August 2007, when you were discharged by reason of physical disability, with entitlement to severance pay, because of an unfitting condition of your right shoulder. Effective 1 September 2007, the Department of Veterans Affairs (VA) assigned you separate disability ratings of 10% for your right and left shoulders and tinnitis, and 0% ratings for five other conditions. The VA denied your request for service connection for nine other conditions.

The Board did not accept your contention to the effect that you are entitled to be retired by reason of physical disability because your right shoulder condition is permanent and has required further surgery. In this regard, it noted that a final disability rating of 30% or higher is required in order for a service member to be retired by reason of physical disability, unless the service member has completed sufficient service to qualify for transfer to the Fleet Reserve. Your receipt of a combined disability rating of 30% from the VA is not probative of the existence or error or injustice in your naval record, because the VA assigns disability ratings without regard to the issue of a service member's fitness for military duty at the time of separation. In the absence of evidence which demonstrates that your left shoulder strain and tinnitus rendered you unfit for duty, there is no basis for correcting your record to show that you were retired by reason of physical disability. 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