



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

JRE
Docket No. 06432-09
1 October 2010

[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 30 September 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.

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 enlisted in the Marine Corps on 20 February 2002. You were on limited duty from 27 April 2007 to 13 February 2008, when you were recommended for administrative separation due to lumabago, somatic dysfunction of the lumbar region, and facet syndrome. You were advised that while referral to the Physical Evaluation Board was an option, it was likely that you would be found fit for duty because of the minimal objective evidence of pathology seen in x-ray and MRI studies. You apparently elected to proceed with administrative separation processing. After being advised of your rights in connection with the proposed discharge, you waived the right to appear before an administrative separation board or to otherwise contest the separation action. You were honorably discharged for the convenience of the government on 11 May 2008. On 24 June 2008, the Department of Veterans Affairs (VA) granted you service connection

and disability ratings of 30% for posttraumatic stress disorder with post-concussive syndrome; 20% for degenerative disc disease of the lumbar spine; and separate ratings of 10% for residuals of a head injury, right and left knee conditions, and bilateral tinnitus, for a combined rating of 60% effective the day following your discharge from the Marine Corps.

Your receipt of a combined disability rating of 60% from the VA is not probative of the existence of error or injustice in your naval record because the VA rates all conditions that were incurred in or aggravated by a veterans service without regard to the issue of the veteran's fitness for military duty at the time of release from active duty or discharge. Unlike the VA, the military departments rate only those conditions that render a service member unfit for duty. While it is possible that your back condition would have been found unfitting by the PEB, it does not appear that it would have been ratable at 30% or higher, which is the minimum rating you would have required in order to qualify for disability retirement. The Board was not persuaded that any of the other conditions rated by the VA rendered you unfit for duty at the time of your discharge.

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