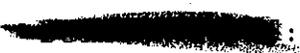




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE

Docket No. 06515-09
7 October 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 17 September 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.

The Board found that you were discharged from the Marine Corps by reason of physical disability on 28 March 1994 with a final disability rating of 10% for a tripartite patella, right knee. On 6 March 2005, the Department of Veterans Affairs (VA) awarded you disability ratings of 10% for each knee, and 0% for tinnitus. On 26 March 1996 the VA added a rating of 10% for a condition of your lower back, which was made retroactive to the day following your discharge from the Marine Corps.

Your receipt of a combined disability rating of 30% from the VA effective 29 March 1994 is not probative of the existence of error or injustice in your naval record. The VA rates all line of duty conditions that are incurred in or aggravated by a period of military service, whereas the departments rate only to those conditions which render a service member unfit for duty. As you have not demonstrated that your back or left knee conditions rendered you unfit to reasonably perform your military duties at the time of your discharge and were therefore ratable by the Department of the Navy, there is no basis for granting your request for correction of your record. 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