



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

JRE  
Docket No. 08350-08  
22 December 2009

[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 17 December 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 served in the Marine Corps from 3 November 1997 to 13 November 2006, when you were voluntarily discharged at the expiration of your active service commitment, and assigned a reentry code of RE-1A. On 12 June 2007, the Department of Veterans Affairs (VA) granted your request for service connection for mild intermittent asthma, mostly exercise induced, with normal airflow found during pulmonary function testing, and obstructive sleep apnea with prescribed continuous positive airway pressure (CPAP) therapy. The 50% rating was based on your use of a CPAP device, rather than an objective assessment of the impairment caused by your pulmonary disorders.

The Board did not accept your unsubstantiated contentions to the effect that you were denied timely medical care and that you should have been retained on active duty to receive further care. It could not find any indication in the available records that you were unfit to reasonably perform the duties of your rank at separation due to the effects of any medical conditions, or that those conditions would have precluded your reenlistment had you desired to reenlist and been otherwise eligible to do so. Your receipt of disability ratings and compensation from the VA is not probative of the existence of error or injustice in your naval record, because VA assigned those ratings based on the mere existence of certain conditions, without regard to the issue of your fitness for military duty at the time of your discharge. 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