



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

JRE
Docket No. 12362-09
22 February 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 4 February 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.

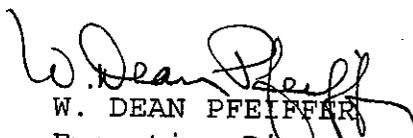
On 23 October 1997, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty by reason of physical disability due to mild partial posterior cord right brachial plexus compression, which was secondary to a "ruck sack injury". The PEB rated that condition at 40%. You accepted the findings of the PEB on 29 October 1997. The findings were approved on 4 November 1997, and you were released from active duty and transferred to the Temporary Disability Retired List. A report of physical examination dated 24 April 2001 indicates that your condition had improved significantly, although you

still had some intermittent neck pain, which you attributed to the injury. You told the physician who performed the examination that you wanted to return to active duty, but he felt that it was doubtful that you would be found qualified for further service in the Marine Corps. In his opinion, you could suffer a recurrence of the injury if you resumed military training, especially when carrying a heavy pack. On 5 February 2002, the PEB made preliminary findings that you remained unfit for duty, and that your disability had improved and was ratable at 20%. As you did not respond to the notification of those findings in a timely manner, your acceptance of the findings was presumed and your case was finalized. You were discharged with entitlement to disability severance pay upon the approval of the findings of the PEB.

The Board did not accept your unsubstantiated contention to the effect that you were misadvised by your PEB liaison officer. In the absence of evidence which demonstrates that your condition was ratable at or above 30% disabling at the time of your discharge, the Board was unable to recommend any corrective action in your case. 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