



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

JRE

Docket No. 00796-10

5 April 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 1 April 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.

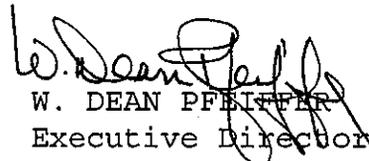
On 29 June 2003, while a member of the Marine Corps Reserve, you were recalled to active duty. You remained on active duty until 11 July 2003, when you were released by reason of completion of required service. On 12 December 2007, the Department of Veterans Affairs (VA) denied your request for service connection for thoracic back strain that was incurred during the aforementioned period of duty. The VA reconsidered that decision at your request, and granted you a 10 percent rating for back strain effective 21 September 2007.

Your receipt of disability compensation from the VA in 2007 is not probative of the existence of error or injustice in your naval record, because the VA granted your without regard to the issue of your fitness for military duty when you were released from active duty in 2003. Although you were treated for a minor back strain while on active duty, there is no indication in the available records that you were unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability on 11 July 2003. Accordingly, the Board was unable to recommend that your record be corrected to show that you were separated or retired by reason of physical disability.

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