



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

JRE

Docket No. 04458-10

31 January 2011

[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 27 January 2011. 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 served on active duty in the Navy from 2 October 1996 to 12 August 2000, when you were released from active duty by reason of insufficient retainability. You submitted a claim for disability compensation to the Department of Veterans Affairs (VA) on 13 September 2000. On 16 October 2001, the VA granted your request for service connection for conditions of your right knee and left great toe that were rated at 10 and 0 percent, respectively. The VA deferred acting on your request for service connection for nine additional claimed disabilities. On 5 December 2001, the VA awarded you separate 0 percent ratings for cervical strain and residuals of a back injury, and denied your request for service connection for conditions of your left knee, right great toe, right and left ankles, right wrist, left elbow and right hip. You completed a Report of

Medical History on 21 February 2002 in connection with your application for reenlistment in the Navy. You disclosed a history of recurrent back pain, as well as a knee injury, and reported that you had received VA compensation for a knee condition. You failed to disclose that you had applied to the VA for service connection and disability compensation for the eight other conditions noted above.

You reenlisted in the Navy on 27 February 2002, after receiving a waiver of your disqualifying knee condition. You were evaluated by the Physical Evaluation Board (PEB) on 30 April 2004 and found fit for duty notwithstanding your complaints of hip pain, chronic lumbar strain, genitofemoral nerve neuritis, and pelvic pain. You accepted the finding of the PEB on 12 May 2004, and waived your right to demand a full and fair hearing before the PEB. On 14 September 2004, you were discharged for the convenience of the government by reason of a "condition not a disability". The specific condition is not shown in the available records.

The Board did not accept your unsubstantiated contention to the effect that you were unfit for duty by reason of physical disability that resulted from mistreatment by your doctor and lack of adequate medical attention and care. As noted above, you were found fit for duty by the PEB, and you accepted that finding, which suggests that you felt that you were fit for duty at that time. The fact that you were subsequently discharged by reason of an unknown "condition not a disability" does not demonstrate that you were unfit for duty by reason of physical disability. In addition, the Board noted that the increase in severity of your conditions that occurred during the years following your discharge is a matter within the purview of the VA, which, unlike the military departments, may change a veteran's disability rating at any time as conditions warrant.

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 PFELFFER
Executive Director