



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

JRE  
Docket No. 04586-10  
1 October 2010

[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 30 September 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.

You served on active duty in the Marine Corps from 20 November 1996 to 15 June 2003, when you were discharged by reason of physical disability with entitlement to disability severance pay, for right ankle tendonitis that was rated at 10% disabling. On 22 January 2004, the Department of Veterans Affairs (VA) awarded you disability ratings of 0% for bilateral pes planus (flat feet), 10% for right shoulder totator cuff tendonitis, 10% for left knee patellar arthrosis, 10% for the condition of your right ankle, and 0% for hallux valgus (hammertoe), right foot. A 10% rating for a right knee condition was added effective 16 June 2003, and 50% rating for sleep apnea was added effective 1 November 2004.

Your receipt of substantial disability ratings from the VA for conditions that were not rated by the Physical Evaluation Board is not probative of the existence of error or injustice in your naval records. The VA assigns disability ratings without regard to the issue of the veteran's fitness for military duty, whereas the military departments rate only those conditions that render a service member unfit for duty. Although you suffered from a number of medical conditions during your service that were ultimately rated by the VA, you were found unfit for duty because of your ankle condition, which remained symptomatic despite multiple treatment modalities and periods of limited duty. There is no indication in the available records that the conditions of your shoulder, knees, or feet, or the sleep apnea, rendered you unfit to reasonably perform the duties of your office, grade, rank or rating. 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