



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

JRE

Docket No. 08319-10

3 March 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 3 March 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. In this regard, the Board found that you were voluntarily separated from the Marine Corps on 22 August 1967 without entitlement to disability separation or retirement because you had recovered from the wounds you had sustained on 12 August 1966 and were considered fit for duty and separation at that time.

The Department of Veterans Affairs (VA) must assign a disability rating to any condition incurred in or aggravated by a period of military service, without regard to the issue of the veteran's fitness for military duty; consequently, the VA was required to rate the loss of your spleen and a kidney even though neither condition was more than minimally symptomatic. In addition, the VA is permitted to add disability ratings at any time, as it did in your case in 2004, 2007 and 2009, when it added ratings for posttraumatic stress

disorder, coronary artery disease, tinnitus, hearing loss, scars, and compensatory hypertrophy of your remaining kidney. Unlike the VA, the military departments are permitted to assign disability ratings only in those cases where the service member has been found unfit to reasonably perform the duties of his office, grade, rank or rating at the time of separation or retirement. Once assigned, ratings cannot be raised or lowered, and ratings for new or related conditions cannot be assigned. As you performed your duties in a highly creditable manner until you were discharged from the Marine Corps, there was no basis for referring you for disability evaluation or finding you unfit for duty.

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