



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

JRE

Docket No. 388-12

19 October 2012

[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 18 October 2012. 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 in the Navy from 9 July 1979 to 8 July 1983, when you were released from active duty and transferred to the U.S. Navy Reserve (USNR). You were discharged from the USNR on 7 August 1987 by reason of misconduct/drug abuse. You were notified on that date in an Administrative Remarks service record entry that you were not recommended for reenlistment.

You fraudulently enlisted in the Navy Reserve on 23 March 2001. In this regard, the Board found that on 12 March 2001, you certified that you had never used or possessed illegal drugs or mind altering substances except as prescribed by a licensed physician; you believed you had been recommended for re-affiliation/reenlistment at the expiration of your last period of service; and that you had prior service in the Navy Reserve only from 8 July 1983 to 20 January 1985. In addition, you apparently provided recruiting officials a document which indicates that you had been recommended for reenlistment at the conclusion of your prior service, and you certified in your enlistment contract that you had completed only two years of prior inactive service in the Navy Reserve.

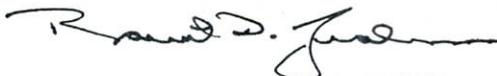
You began an extended period of active duty service on 25 July 2008. You completed a Report of Medical Assessment on 8 August 2011 in which you stated that you did not have any conditions which limited your ability to work in your primary military specialty or required geographic or assignment limitations. You began a period of terminal leave on 8 August 2011, and underwent elective spinal fusion surgery at a civilian facility on 5 October 2011. You were released from active duty on 24 December 2011 and assigned a reentry code of RE-1 to indicate that you were qualified and recommended for reenlistment.

The Board was not persuaded that you were unfit for duty by reason of physical disability on 24 December 2011. It noted that cervical fusion is not unfitting per se, and that you have not presented any evidence which suggests that the surgery you underwent on 5 October 2011 rendered you unfit for duty. The Board also noted that the instruction you cited in your petition, which pertains to the application of the Department of Veterans Affairs schedule for rating disabilities by the military departments, was not in effect on the date of your discharge. In addition, there it noted that there was nothing in that instruction when it was in effect which required that a medical evaluation board be convened in the case of each service member who had undergone cervical fusion.

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,

A handwritten signature in cursive script, appearing to read "Robert D. Zsalmán".

ROBERT D. ZSALMAN  
Acting Executive Director