



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

JRE
Docket No: 4125-98
7 June 1999



Dear [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 May 1999. 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.

The Board found that you enlisted in the Marine Corps on 29 September 1969. On 25 November 1969, a medical board gave you a diagnosis of spondylolisthesis, L-5 on S-1, and recommended that you be discharged by reason of erroneous enlistment. The body of the report indicates that there was exaggerated lumbar lordosis and limitation of motion in your low back. In addition, you disclosed a five year history of spontaneously recurrent backache. After being advised of the findings and recommendation of the medical board, you declined to submit a statement in rebuttal thereto. You were discharged in accordance with the approved recommendation of the medical board on 10 November 1969. You were examined at a VA facility during July 1970, and were found to have a congenital deformity at the fifth lumbar vertebra and spondylolisthesis. The Veterans Administration (VA) denied your claim for compensation for the back condition based on that agency's independent determination that the condition was neither incurred in or aggravated by your military service. The Board of Veterans Appeals confirmed that denial on 18 November 1971. A new claim was denied by the VA on 22 December 1997.

The Board concluded that irrespective of the accuracy of the diagnosis of spondylolisthesis made by the Navy and subsequently confirmed by the VA, you were not fit for military service because of your long history of lower back pain. There is no credible evidence which demonstrates that the condition was incurred in or aggravated by your brief period of naval service. 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