



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

JRE
Docket No. 10281-02
14 August 2003



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 14 August 2003. 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. The Board also considered the comments of your counsel.

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 appeared before a medical evaluation board (MEB) on 30 August 2001, and were given a diagnosis of severe degenerative disk changes, with chronic back and right lower extremity pain secondary thereto. The report of the MEB was referred to the Physical Evaluation Board (PEB) for review and disposition on 6 September 2001. On 24 September 2001, the President, PEB advised the Commanding Officer, Naval Medical Center, Portsmouth, Virginia, that the MEB had been rejected by the PEB because a PEB physician had determined that "the member will not overcome the presumption of fitness." It appears that the MEB was rejected because you were pending mandatory

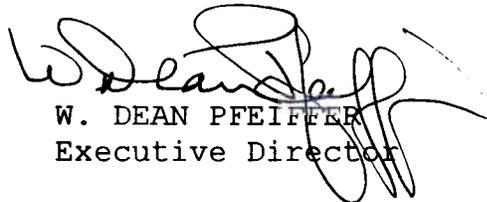
retirement on 1 October 2001, and it was determined that your spinal condition did not contribute to the early termination of your career, and that there was no serious deterioration of your condition in the months prior to your approved retirement date that would have prevented you from performing duties commensurate with your grade and experience had you not retired. You underwent elective spinal surgery on 25 September 2001, and were retained on active duty until 31 October 2001. You transferred to the Retired List effective 1 November 2003.

The Board was not persuaded that the elective surgery you underwent on 25 September 2001 resulted in deterioration of your condition sufficient to overcome the presumption of fitness. It concluded that although your service was extended until 31 October 2001 to allow you to recuperate from the surgery, there was no need for an extension beyond that date, and no basis for further action by an MEB or the PEB. As such, you had no right to be retained on active duty beyond your approved retirement date, as extended.

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