



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

JRE
Docket No. 04424-00
10 April 2001

[REDACTED]

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. In addition, it considered the comments of your counsel.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 April 2001. 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 underwent a pre-enlistment physical examination on 22 December 1992. You disclosed a history of shoulder and knee injuries, but they were asymptomatic at that time, and you were found fit for enlistment. You enlisted in the Marine Corps on 5 April 1993. You experienced knee pain from time to time during your enlistment, without further significant injury. On 29 September 1994, a medical board determined that you were unfit for duty because of your knee condition, and that you did not meet the minimum physical standards for enlistment. It recommended that you be discharged by reason of erroneous enlistment, without entitlement to disability benefits administered by the Department of the Navy. You accepted those findings and recommendations on 27 October 1994, waived your right to an appearance before a physical evaluation board, and requested that you be discharged as soon as possible. Your request was granted, and you were discharged on 23 February 1995. On 15 September 2000, the Department of Veterans Affairs (VA)

denied your request for service connection for your knee condition.

The Board noted that you were found fit for enlistment in the Marine Corps based on the evidence available on 22 December 1992. Upon your entry on active duty, it became apparent that your knee could not withstand the rigorous nature of Marine Corps training, and you were discharged. Your enlistment was considered erroneous because you would not have been permitted to reenlist had the true nature of your condition been known to officials who approved your enlistment. As you have not demonstrated that your condition was incurred in or aggravated by your service, or that your discharge was otherwise erroneous, the Board was unable to recommend any corrective action in your case. 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