



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

JRE
Docket No. 00602-09
23 November 2009



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 12 November 2009. 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 appeared before a medical evaluation board (MEB) on 17 November 2006. The report of that board indicates, in part, that you had a history of bilateral femoral stress fractures in April 2005, and that you were seen by a podiatrist during June 2006 and given a diagnosis of bilateral metatarsalgia (pain in the foot in the metatarsal area just before the toes) and bilateral gastroc equinus (tight calf muscles). The MEB established final diagnoses of metatarsalgia and gastroc equinus and recommended that your case be reviewed by the Physical Evaluation Board (PEB). On 19 December 2006, after being advised of the findings and recommendation of the MEB, you declined to submit a statement in rebuttal thereto. On

28 December 2006, the PEB made preliminary findings that you were unfit for duty because of bilateral metatarsalgia, which was ratable at 20 percent, and bilateral gastroc equinus, which was classified as a related category 2 diagnosis. On 17 January 2007, you accepted those findings, and stated that you intended to request that you be retained on active duty in a limited duty status until 10 June 2007. Thereafter, an official of the PEB recommended that you be granted continuation on active duty until 1 June 2007. You were honorably discharged from the Marine Corps on 8 May 2007, in accordance with the approved findings of the PEB, with a combined rating of 20%. On 21 May 2007, the Department of Veterans Affairs (VA) awarded you separate disability ratings of 10 percent for ten conditions, as follows: left and right wrist strain, status-post stress fracture right and left femoral neck, right thumb and index finger strain, patellofemoral syndrome, right knee, osteoarthritis of the thoracolumbar spine, tinnitus, and bilateral metatarsalgia. You received a combined disability rating of 70 percent and entitlement to monthly compensation in the amount of \$1,401.00, for the ten conditions.

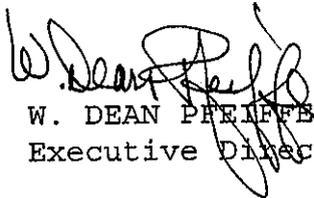
The Board concluded that your receipt of disability ratings from the VA for eight conditions that were not rated by the PEB is not considered probative of the existence of error or injustice in your naval record, because the VA awarded those ratings without regard to the issue of your fitness for military duty as of 8 May 2007, when you were released from active duty and discharged. It concluded that that those conditions were productive of no more than mild impairment.

In the absence of evidence which demonstrates that the conditions of your femurs rendered you unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability your discharge, 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