



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

JRE  
Docket No: 7583-98  
4 May 1999



Dear Mr. Hartnett:

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 29 April 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 served on active duty in the Marine Corps from 4 September 1964 to 29 November 1966, when you were released from active duty and transferred to the Temporary Disability Retired List (TDRL) because of the residual effects of a wound to your right foot sustained in Vietnam. Subsequently, you were found fit for duty, and you reenlisted in the Marine Corps on 10 June 1970. You were permanently retired by reason of physical disability on 7 March 1972 because of your foot condition.

The Board noted that disability ratings assigned by the military departments are fixed as of the date of separation or permanent retirement. Although it is possible that you had kyphosis and scoliosis prior to your permanent retirement, there is no indication in the available records that you were disabled by a back condition at that time. Unlike the military departments, the Department of Veterans Affairs (VA) may raise, lower, add or delete disability ratings throughout a veterans lifetime, as changes in the veterans disabilities occur. If you can establish that your back conditions are the result of your foot injury, the VA may grant service connection and an appropriate disability rating for those conditions. With

regard to your request for amendment of recommended finding (4) made by the Physical Evaluation Board in your case on 31 January 1972, the Board concluded that no corrective action is required. The officials who rated your condition were required to choose one of the three options under finding (9) in order to establish your basic eligibility for disability benefits administered by the Department of the Navy. As your condition was the proximate result of active duty, option (9)(1) was selected. Options (9)(2) or (3) would have been appropriate choices only if your injuries were not the proximate result of active service, e.g., if you had been injured while off-duty while engaging in a recreational activity.

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