



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

JRE
Docket No: 1979-02
5 November 2002



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 3 October 2002. 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 entered on active duty in the Marine Corps on 11 January 1961. You underwent a pre-separation physical examination on 5 January 1965, and were found physically qualified for release from active duty. The examining physician noted that you had undergone complete orthopedic and neurosurgery work-ups for back pain, and that the diagnostic impression was lumbar strain. You had some symptoms at that time, but no motor loss. You were on full duty, and had passed the physical readiness test six months earlier. You failed to disclose any conditions you thought warranted further investigation or that rendered you unfit for duty. You were released from active duty for the convenience of the government on 8 January 1965. The Veterans Administration (VA) awarded you a 10% rating for a lower back condition effective 18 August 1971. The rating was ultimately increased to 60% many years after your discharge, and a 70% rating for depression was added in 1999.

The Board noted that in order for a service member to be eligible for disability retirement, he must be unfit to perform the duties of his office, grade, rank or rating by reason of physical

disability rated at 30% or higher. The available records do not demonstrate that you were unfit for duty because of a back condition or a mental disorder when you were released from active duty in 1965. The fact that the VA has awarded you substantial disability rating is not probative of the existence of error or injustice in your naval record because the VA assigns ratings without regard to the issue of fitness for military duty, and it may raise, lower, or assign ratings throughout a veteran's life time. Unlike the VA, the military departments make fitness determinations and rating assignments as of the date of separation or retirement, and those determinations are not subject to change as the severity of the condition in questions changes over time. There is no indication in your record that you were the victim of racial discrimination which resulted in your being denied an appearance before a board of medical survey, or that your complaint of back pain was characterized as a "scam" as you allege. The Board rejected your unsubstantiated contention to the effect that the signature appearing in item 73 of the Standard Form 88 completed on 5 January 1965 is not your signature.

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