



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

JRE
Docket No: 2795-01
17 September 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 12 September 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. In addition, the Board considered the advisory opinion furnished by the Commandant of the Marine Corps dated 10 September 2001, a copy of which is attached, and your response thereto.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The Board noted that your transfer from an active status in the Marine Corps Reserve was mandated by statute. Although your transfer could have been deferred, in the discretion of the Secretary of the Navy, it does not appear that such action was warranted in your case. In this regard, the Board noted that a medical board would not have been initiated unless cognizant medical personnel determined that your condition was severe enough to have overcome the presumption of fitness which applies to service members pending non-disability retirement. The presumption, which is defined in SECNAVINST 1850.4D, paragraph 3305, which was in effect at the time in question, would be overcome where a preponderance of evidence established that within the presumptive period, an acute, grave illness or injury occurred that would have prevented the service member from performing further duty if the member were not retiring. The presumption of fitness was considered to have been overcome in those cases where the member had an otherwise unfitting medical condition and, based on accepted medical principles, the natural progression of that condition normally results in either significant life-span reduction/death or

deterioration to the point where it could warrant a permanent disability rating of 60 percent. It is clear that your knee condition was not severe enough to have overcome the presumption of fitness.

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

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1770

RAM-3

SEP 16 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE
CASE OF [REDACTED]

Ref: (a) MCO P1900.16
(b) Title 10, U.S. Code, Section 14506

Encl: (1) Copy of RA Div Comment of 19 Mar 01
(2) Copy of CMC ltr 1770 RAM-3/D of 5 Mar 01

1. As previously explained in enclosure (1), which responded to a Congressional Inquiry submitted on behalf of [REDACTED] references (a) and (b) outline the regulations pertaining to Marines in receipt of Notice of Eligibility (NOE) Benefits when a mandatory retirement date arrives. The law allows for modification of a mandatory retirement date only if the Marine is hospitalized or a medical board report has been received by the Physical Evaluation Board (PEB), prior to the date of retirement. Also, as stated in a previous response, had the major's benefits been requested immediately after his injury, a medical board would still not have been convened by the time his mandatory retirement date arrived. Consequently, since a medical board was not in the hands of the PEB by 1 February 2001, his retirement date was executed, his NOE benefits were terminated, and his incapacitation pay was paid for the period during which he was eligible. Enclosure (2) terminated NOE benefits for [REDACTED] and was forwarded to his command, the Marine Corps Reserve Support Command.

2. If [REDACTED] is still in need of medical treatment for his service-incurred injury, he is eligible to file a claim with the Veterans Administration.

3. This Headquarters recommends that [REDACTED] remain in a retired status, in accordance with references (a) and (b).

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4. The point of contact at this Headquarters for Notice of
Eligibility (NOE) Benefits is [REDACTED]
[REDACTED] 703-784-0512.

[REDACTED]
By direction