



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

JRE
Docket No. 09843-08
24 August 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 13 August 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 were discharged from the Marine Corps on 18 February 1994 as a result of your non-selection for promotion to staff sergeant, E-6. Although you had been placed on limited duty on 4 January 1994 for a period of up to six months, your shoulder was re-examined and you were cleared for separation. The Department of Veterans Affairs (VA) awarded you separate disability ratings of 10% for conditions of your right shoulder, cervical spine and left leg, for a combined rating of 30% effective 19 February 1994.

Your receipt of a disability rating from the VA 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. As you have not demonstrated that you were unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability at the time of 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