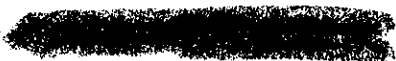




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 00021-09
9 March 2010



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 4 March 2010. 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 Director, Secretary of the Navy Council of Personnel Boards dated 23 November 2009 and your response thereto. A copy of the advisory opinion is attached. The Director is an active duty Marine Corps colonel who has cognizance over the Navy Disability Evaluation System (DES) and several Department of the Navy review boards. Among his duties is to act for the Secretary of the Navy on requests for relief from final actions of the DES. His opinions are prepared with the advice and assistance of his senior legal and medical advisors.

The Board also considered the contents of your Department of Veterans Affairs (VA) claims folder. Among the records in that

folder are two civilian health record entries of note which you did not submit in support of your application. An entry dated 23 December 2003, following your return from Iraq, contains the following under the heading "SUBJECTIVE":

"Michael presents with worsening left knee pain from his arthritis. He has been doing a lot of skiing lately. He notes a pretty constant soreness in his left knee. The patient denies any locking, giving way, but noted some mild swelling."

An entry dated 14 June 2006, during your tenure on the Temporary Disability Retired List, contains the following entry under the heading "SUBJECTIVE":

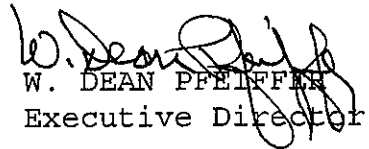
"This is a 49-year-old gentleman here for evaluation of right knee pain he has had now for about a month or so. He has had a history of being seen at The Rothman Institute for his left knee. He did undergo left knee total arthroplasty in the past and that is doing great. The right knee has started to bother him. He is a very active person who does a lot of umpiring both for softball and for soccer so he is constantly on his knee and that is when it bothers him the most. Rest and taking it easy does seem to help. He has never had any surgeries on the right knee. He does not have any other complaints."

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 was not persuaded that you are entitled to additional disability ratings from the Department of the Navy, or that any of your conditions directly resulted from a combat related event. 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 PEIFFER
Executive Director

Enclosure