



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX JRE

WASHINGTON DC 20370-5100

Docket No. 01068-10

31 January 2011

[REDACTED]

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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 21 January 2011. 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.

You enlisted in the Marine Corps on 6 October 1999. On 30 September 2004, while on terminal leave, you were severely injured in a motor vehicle accident. Available records indicate that the high rate of speed at which you were driving the vehicle and consumption of alcohol were contributing factors to the accident. There is no indication that a line of duty investigation into the circumstances of the accident and injuries was conducted. You were retained on active duty for almost one year beyond your expiration of active obligated service in order to receive medical treatment and rehabilitative services, and to complete periods of convalescence. You were carefully evaluated on 20 September 2005 and considered qualified for separation. You completed a Report of Medical History on that date in which denied having a history of psychiatric complaints, to include anxiety or depression. You were released from active duty

on 29 September 2005 by reason of completion of required active service, and assigned a reentry code of RE-1A to indicate that you were qualified and recommended for further service.

On 3 May 2006, the Department of Veterans Affairs (VA) awarded you disability ratings of 30% for depression, separate 10% ratings for six conditions, and separate 0% ratings for five conditions. VA rating officials determined that although the mental disorder was "not shown in service", there was a relationship between that disorder and your in-service injuries. The rating for the mental disorder was increased to 100% effective 29 July 2009.

The Board concluded that your receipt of disability ratings from the VA is not probative of the existence of error or injustice in your case, because the VA assigned those ratings without regard to the issue of your fitness to reasonably perform military duty at the time of your discharge. In addition, the Board noted that although the VA may increase a veteran's disability ratings at any time to reflect changes in the degree of severity of rated conditions, disability determinations made by the military departments are fixed as of the date of the service member's release from active duty or discharge. As you have not demonstrated that you were unfit for duty by reason of physical disability on 28 September 2005, 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