



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

JRE
Docket No. 02133-07
21 August 2008



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 August 2008. 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 Navy on 15 August 2006 in accordance with the provisions of Military Personnel Manual article 1910-170, Physical Standards, based on your multiple failures of the Navy's physical fitness assessment due to your overweight condition. You received approximately \$29,000.00 in separation pay. Effective 16 August 2006, the Department of Veterans Affairs (VA) granted you service connection and disability ratings of 50% for sleep apnea corrected by the use of a continuous positive airway pressure (CPAP) device, and 0% for arthritis of the cervical spine,

bilateral knee conditions, penile deformity, and hypertension. On 24 March 2007, the VA added a 30% rating for left ventricular hypertrophy, based on the results of an electrocardiogram which showed mild concentric ventricular hypertrophy. The rating for the heart condition was made effective from 16 August 2006. On 6 November 2007, the VA increased the rating for the condition of your cervical spine to 30% effective 8 August 2007.

The Board was not persuaded that you were improperly denied the opportunity to request transfer to the Retired Reserve in lieu of discharge with entitlement to separation pay for failing to meet PFA standards. The Board noted that you will be entitled to retired pay at age 60 as a former member of the Navy Reserve.

Although you suffered from a number of medical conditions during your period of naval service, to include the mild left ventricular hypertrophy, a cervical spine condition, and controlled sleep apnea, which the VA rated at 30, 30 and 50%, respectively, there is no indication in the available records that any of those conditions significantly impaired your ability to perform your military duties, or warranted evaluation by a medical board. The fact that the VA granted you substantial disability ratings effective the day following your discharge from the Navy is not probative of your contentions of error and injustice, because those ratings were assigned without regard to the issue of your fitness for military duty. Accordingly, and 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 on 15 August 2006, 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