



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

JRE

Docket No. 03478-07
6 May 2008

[REDACTED]

[REDACTED]

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 1 May 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 on 28 January 2005, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty by reason of bilateral knee conditions, each of which was rated at 10%. You rejected those findings on 2 March 2005 and demanded a formal hearing. On 10 March 2005, an addendum to your medical evaluation board report was drafted to address your complaints of bilateral shoulder pain, chronic low back pain and bilateral carpal tunnel syndrome. You withdrew your demand for a hearing on 11 April 2005, and accepted the findings of the PEB. Those findings were approved on 14 April 2005, and you were

discharged with entitlement to disability severance pay on 31 May 2005. On 6 September 2005, the Department of Veterans Affairs (VA) awarded you 10% ratings for arthritis of the right knee, an osteochondral defect of the left knee, and bilateral tendonitis of the shoulders, and 0% ratings for conditions of your wrists, lumbar and thoracic spine, and pseudofolliculitis barbae.

The MRI report you submitted with your application was apparently considered by the PEB, as a copy of that report is filed in your Disability Evaluation Proceedings. It is unclear whether or not the 10 March 2005 addendum to the medical evaluation board was approved and forwarded to the PEB for review; however, that issue is moot in view of your acceptance of the findings of the PEB and withdrawal of your demand for a formal hearing.

The fact that the VA awarded you disability ratings for bilateral shoulder conditions is not probative of the existence of material error or injustice in your naval record, because the VA made that award without regard to the issue of fitness for military duty vis-à-vis the shoulder conditions. As the Board was not persuaded that the bilateral shoulder conditions rendered you unfit for duty, or contributed to your unfitting knee conditions, it 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