



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

JRE  
Docket No. 05152-07  
17 June 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 12 June 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 22 June 2006 by reason of a condition, not a disability, which interfered with your performance of duty, specifically, your obesity and use of a continuous positive airway pressure (CPAP) device to treat sleep apnea, which limited your deployability and assignment to smaller naval vessels, but did not render you unfit for duty. You received a highly laudatory evaluation report and counseling record for the period 2 December 2005-6 June 2006, with an individual train average of 4.14, a "must promote" recommendation" in item 45, and comments to the effect that you were a dedicated and conscientious worker with the

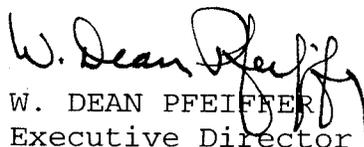
potential for success in any work environment. You were not qualified for Navy Reserve Retirement because you did not serve in the Navy Reserve from 9 September 1996 to 22 June 2006 or complete twenty years of qualifying service for reserve retirement.

Your receipt of substantial disability ratings from the Department of Veterans Affairs (VA) does not demonstrate that your discharge from the Navy is erroneous, because the VA awards ratings without regard to the issue of fitness for military duty. For example, you received a rating of 50% merely because you use a CPAP device, which is designed to ameliorate your sleep apnea condition. The 16 May 2007 determination of the VA that you are unemployable and therefore entitled to disability payments at the 100% rate appears to have been based on your subjective belief that you were unable to work, rather than objective evidence that demonstrated that you were unable to work because of the cumulative effects of your rated conditions.

In the absence of evidence which demonstrates that you were unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability on the date of your discharge, the Board was unable to recommend 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