



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

JRE
Docket No. 07442-07
27 October 2008



Dear Mr. [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 of 9 October 2008. The Board concluded that so much of your application as pertains to the expunction of records of nonjudicial punishment and counseling entries was not timely filed, and that it would not be in the interest of justice to excuse your failure to submit those requests in a timely manner. In this connection, the Board substantially concurred with the comments contained in the enclosed advisory opinion from the Judge Advocate Division, Headquarters Marine Corps, dated 12 March 2008.

After careful and conscientious consideration of your remaining requests for correction of your record, the Board found that the evidence submitted was insufficient to demonstrate the existence of probable material error or injustice.

The Board was not persuaded that there is material error or injustice in connection with your discharge by reason of misconduct/minor disciplinary infractions, which was executed pursuant to the approved findings and recommendation of an administrative discharge board.

As you were pending separation by reason of misconduct, you were not entitled to have the Physical Evaluation Board (PEB) consider your medical board diagnoses of adjustment disorder and chronic leg pain and evaluate your fitness for further service. The Board concluded that it is unlikely you would have been separated or retired by reason of physical disability even if your case had been considered by the PEB, as it noted that an adjustment disorder is not a disability under the laws administered by the Department of the Navy. In addition, the Board did not believe that your chronic leg pain, which was largely subjective in nature, rendered you unfit to reasonably perform the duties of your office, grade, rank or rating when discharged by reason of misconduct/minor disciplinary infractions on 26 May 1999.

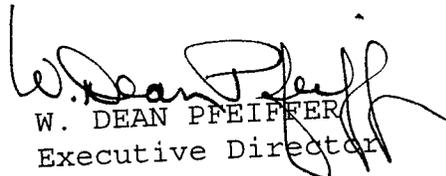
In view of the foregoing, your application has been denied.

The Board did not consider recharacterizing your service as honorable or under honorable conditions, as you did not exhaust an available administrative remedy by applying to the Naval Discharge Review Board for upgrade of your discharge.

You may request reconsideration of the Board's decision. Your request must include newly discovered relevant evidence which was not reasonably available to you when you submitted your application. The evidence may pertain to the timeliness of your application or to its merits. Absent such additional evidence, further review of your application is not possible.

It is regretted that a more favorable reply cannot be made.

Sincerely,


W. DEAN PFEIFFER
Executive Director

Enclosure