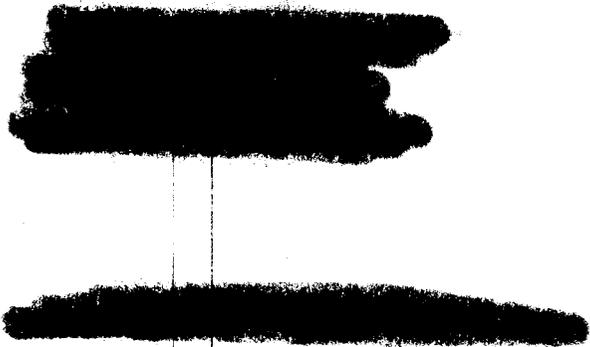




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 08400-07
6 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 31 July 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.

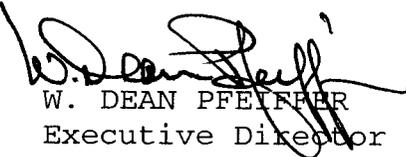
The Board found that on 24 May 2007, the Physical Evaluation Board (PEB) determined that you were permanently unfit for duty and entitled to a combined disability rating of 30%. A letter notifying you of those findings was received at your home address on 20 June 2007. Although you were released from a hospital two days later, following a neurosurgical procedure, there is no indication in the available records that you were mentally incompetent at that time, or otherwise unable

to respond to the letter of notification from the PEB. As you did not respond to the notification letter in a timely manner, your case was finalized by the President, PEB, on 17 July 2007, and you were permanently retired by reason of physical disability with a combined disability rating of 30%.

The Board was not persuaded that you were entitled to a combined disability rating in excess of 30% for your conditions of fibromyalgia and patellofemoral arthritis, or that you had any other ratable disabilities. In this regard, the Board noted that a condition newly diagnosed during a Temporary Disability Retired List (TDRL) examination are ratable upon finalization only when the condition is unfitting and was caused by a condition for which the member was placed on the TDRL or directly related to its treatment. You have not demonstrated that any such diagnoses were made during your tenure on the TDRL. 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