



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

JRE  
Docket No. 01227-08  
25 November 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 20 November 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 initially enlisted in the Navy on 11 June 1991. You were honorably discharged on 30 June 2006 for the convenience of the government due to a condition, not a disability, which interfered with your service. The discharge was specifically based on your use of a continuous positive airway pressure (CPAP) device for sleep apnea, which made you non-deployable. You received a highly complimentary evaluation report for the period ending 30 June 2006 in which you were recommended for promotion and retention. On 21 March 2007, the Department of Veterans Affairs (VA) awarded you a combined

disability rating of 80%, effective 1 July 2006, for obstructive sleep apnea, 50%; adjustment disorder with depressed and anxious mood, 30%; and conditions of each knee, cervical spine, lumbosacral spine, tinnitus and hypertension, each rated separately at 10%. In addition, the VA rated three conditions at 0%, and determined that fifteen other conditions for which you requested ratings were not incurred in or aggravated by your naval service. The 50% rating for sleep apnea was assigned primarily because of your use of a CPAP device, rather than due to the impairment of social or industrial adaptability caused by the sleep apnea.

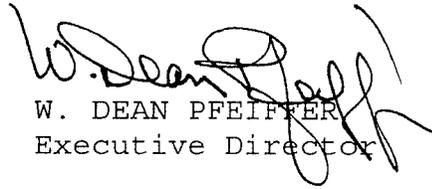
The Board concluded that your receipt of substantial disability ratings from the VA is not probative of the existence of error or injustice in your naval record. In this regard, it noted that the VA assigned those ratings without regard to the issue of your fitness to perform military duty at the time of your discharge. The military departments, unlike the VA, are permitted to assign disability ratings only in those cases where a service member has been found unfit to reasonably perform the duties of his office, grade, rank or rating by reason of physical disability. An administrative disqualification from deployment, as occurred in your case, is not unfitting per se, as there is no requirement that a service member be capable of performing duty in all locations and under every circumstance. Your record establishes that you performed your duties in a highly creditable manner notwithstanding your history of sleep apnea and the numerous other conditions for which you receive disability compensation from the VA.

While it is unfortunate that you were not permitted to remain on active duty until you completed sufficient service to qualify for length of service retirement, you have not demonstrated that you were discharged in error and that you should have been separated or retired by reason of physical disability. 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