



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

JRE
Docket No. 02676-08
10 July 2009

[REDACTED]

Dear [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 25 June 2009. 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. In addition, the Board considered the advisory opinion furnished by the Commander, Navy Personnel Command, dated 15 April 2009, a copy of which is attached, and your response thereto.

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 concurred with the comments contained in the advisory opinion to the extent that your record, as updated by the Defense Finance and Accounting Service, indicates that you have been paid as a commander since your transfer to the Temporary Disability Retired List (TDRL) on 1 October 2006, and that you have continued to be paid in that grade since your permanent retirement by reason of physical disability effective 1 October 2008.

With regard to your amended request for correction of your record to show that you were not released from active duty on 12 June 2004 and that you remained on active duty until your transfer to the TDRL on 1 October 2006, the Board concluded that you have not demonstrated that your release from active duty in 2004 was erroneous or unjust. It noted that you were considered examined and found fit for duty prior to your release from active duty. In addition, the Physical Evaluation Board (PEB) that considered your case on 18 August 2005 found you fit for duty. The subsequent change in the diagnosis of your condition and the determination by the PEB that you were unfit for duty in 2006, do not establish that you were unfit for duty when you were released from active duty in 2004, or that you were entitled to be retained on active duty.

In view of the foregoing, 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