



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

JRE
Docket No. 05771-08
20 July 2009



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. You contend that you are statutorily entitled to a disability rating of 50%

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 July 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.

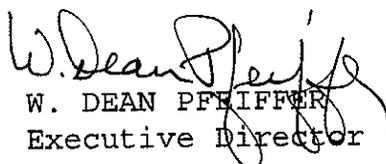
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you were released from active duty 4 April 2002 and transferred to the Temporary Disability Retired List with a disability rating of 100%. On 9 April 2007, the Physical Evaluation Board determined that you remained unfit for duty because of a pulmonary disorder rated at 30% and dementia due to a general medical condition rated at 10%. You accepted the findings of the PEB on 2 May 2007 and were permanently retired with a combined disability rating of 40%.

The computation of disability retired pay is governed by the provisions of 10 US Code 1401, which provide, in effect, that service members whose names are on the TDRL are entitled to a minimum of 50% of their retired pay base amount, and that those who are permanently retired are entitled to an amount determined by multiplying the retired pay base amount times the final combined disability percentage, up to a maximum of 75%. As your final combined disability rating is 40% and you are no longer on the TDRL, you are entitled to 40% of your retired pay base amount, rather than 50% as you contend. 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