



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

JRE  
Docket No. 07831-08  
24 August 2009

[REDACTED]

[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 20 August 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 on 30 July 1997, the Physical Evaluation Board (PEB) determined that you were unfit for duty because of asthma, which it rated at 10% disabling. The PEB also determined that your major depression, single episode,, resolved, and panic disorder with agoraphobia, in remission, were not separately unfitting and did not contribute to the unfitting condition. You accepted those findings on 8 August 1997 contingent upon your being retained on active duty for a period of 60 to 90 days. You were discharged by reason of

physical disability on 15 December 1997, with entitlement to disability severance pay.

The Board did not accept your unsubstantiated contentions to the effect that you did not receive the correct rating for asthma and that the PEB did not consider "all unfitting conditions". The fact that the Department of Veterans Affairs (VA) rated the asthma at 30% is not probative of the existence or error or injustice in your naval record because ratings assigned by the VA are not binding on the military departments, and there is no indication in the VA rating decision which demonstrates that you should have received a higher rating from the Department of the Navy. 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