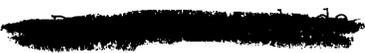




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 09901-08
23 March 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 March 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. The Board was unable to obtain a copy of your naval health record or the contents of your Department of Veterans Affairs (VA) claims folder from the VA, which has custody of those records.

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.

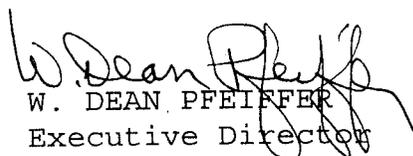
The Board found that on 22 October 2007, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty due to left rotator cuff tendonitis, low back pain, and right rotator cuff tear status/post repair, rated at 20%, 10% and 10%, respectively under VA code 5303. The PEB reconsidered those findings at your request, and added a 10% rating for carpal tunnel syndrome under VA code 8615, for a combined rating

of 50%. In a letter dated 7 January 2008, you stated that you agreed with the reconsidered findings, and had advised your Navy attorney to accept them for you. You were released from active duty on 28 April 2008 and permanently retired by reason of physical disability in accordance with the approved findings of the PEB.

The Board was not persuaded that you were unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability due to sleep apnea, or that the disability ratings you received from the PEB are erroneous. 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