



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

JRE

Docket No. 12082-08

5 June 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 29 May 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 enlisted in the Navy on 12 October 1982. On 23 May 1985, a medical board gave you diagnoses of fractured left tibia and fibula, and fractured right tibia. Although the corpus of the medical board report does not indicate that those conditions became worse beyond normal progression during your naval service, a code on the medical board cover sheet indicates that the conditions were service aggravated. On 26 August 1985, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of the residuals of the leg fractures, and that the

disability was not ratable because it was not incurred in or aggravated by your naval service. You accepted the recommended findings of the PEB on 29 August 1985, and waived your right to a hearing before the PEB. You were discharged without entitlement to disability benefits on 28 October 1985.

The Board was not persuaded that the residuals of your pre-existing leg injuries were incurred in or aggravated by your naval service. As noted above, you apparently agreed with that determination in 1985, as you accepted the findings of the PEB and did not demand a hearing. In the absence of evidence which demonstrates that your disability was aggravated by your service, the Board was unable to recommend any corrective action in your case. 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