



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

JRE
Docket No. 02636-09
16 July 2010



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 requested that the Board order a formal physical evaluation board (PEB) and that you be retired by reason of physical disability effective 7 March 2006.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 July 2010. 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 opinions furnished by Director, Secretary of the Navy Council of Review Boards (SECNAVCORB) dated 1 July 2009 and 6 January 2010. A copy of each opinion is attached. The Director, SECNAVCORB is an official of the Department of the Navy who has cognizance over the Naval Disability Evaluation System and takes final action for the Secretary of the Navy in certain matters pertaining to physical disability separation and retirement of naval service members. The advisory opinions were prepared with the assistance of his staff.

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 in connection with the failure of the Department of the Navy to retire you by reason of physical disability. In this connection, the Board substantially concurred with the comments contained in the advisory opinions.

The Board noted that the regulatory provisions cited by your counsel pertain to periods of light duty, which may be ordered by a physician, rather than limited duty, which can be ordered only by a medical board. The available records do not demonstrate that the cited regulatory provisions were violated in your case. Available records show that you were placed on light duty during January 2006, and that on 8 September 2006 a physician recommended that you be placed in a light duty status for thirty days; however, the medical record entry which contains that recommendation indicates that you were returned to full duty on that date. The entry in the Marine Corps electronic record system concerning your duty status is not substantiated by medical record entries, and was of no probative value to the Board.

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 PFRIFFER
Executive Director