



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

JRE

Docket No. 04541-09

4 February 2010

[REDACTED]

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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 28 January 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.

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.

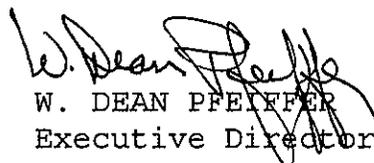
On 23 June 2007, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of a knee condition that was ratable at 10% disabling. You accepted those findings on 2 August 2007 and waived your right to a formal hearing before the PEB. You were discharged with entitlement to disability severance pay on 7 September 2007.

Your receipt of disability ratings from the Department of Veterans Affairs (VA) for conditions not rated by the PEB is not considered probative of the existence of error or injustice in your naval record. In this regard, the Board noted that the VA

assigns disability ratings without regard to the issue of the veteran's fitness for military duty at the time of his separation. As you have not demonstrated that the PEB should have rated your knee condition at 30% or higher, or that you suffered from any other unfitting conditions prior to 7 September 2007, 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