



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

JRE
Docket No. 08664-09
8 June 2010

[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 3 June 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.

You served on active duty in the Navy from 20 August 1991 to 2 June 1995, when you released from active duty and transferred to the Temporary Disability Retired List (TDRL), with a disability rating of 40% for a seizure disorder. You underwent a periodic examination on 22 June 1996, and reported that so long as you took your prescribed medication, you did not have any seizures or jerking activity. On 1 October 1996 the Physical Evaluation Board (PEB) reviewed that report of that examination and determined that you remained unfit for duty due to a seizure disorder, which was ratable at 20%. You accepted those findings on 20 February 1997, and waived your right to a formal hearing before the PEB. The findings were approved by the President, PEB, on 18 March 1997, and you were discharged by reason of physical disability with entitlement to severance pay.

In the absence of evidence which demonstrates that your release from active duty and transfer to the TDRL 2 June 1995 was erroneous, there is no basis for correcting your DD Form 214 to show that you were permanently retired by reason of physical disability on that date. In addition, as you have not established that your seizure disorder was ratable at 30% or higher when you were discharged by reason of physical disability in 1997, there is no basis for correcting your record to show that you were permanently retired upon the removal of your name from the TDRL. 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