



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

JRE  
Docket No. 11951-09  
25 January 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 14 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 25 October 2006, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty by reason of physical disability due to right ankle posttraumatic arthritis, with subtalar joint limitation of motion and osteochondral defect which were rated at ten percent disabling. You accepted those findings on 31 October 2006 and waived your right to demand a hearing before a physical evaluation board. In addition, you requested that you be retained on active duty until 29 January 2007. You were discharged with entitlement to

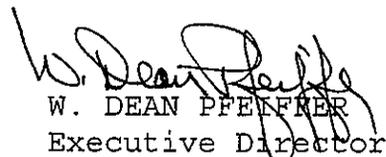
disability severance pay on 29 January 2007, in accordance with the approved findings of the PEB and your request.

The Department of Veterans Affairs (VA) granted your request for service connection for migraine headaches and a condition of your right ankle effective 30 January 2007, and assigned a rating of ten percent to each of those conditions. On appeal, the VA increased the rating for the migraines thirty percent, and the rating for the ankle condition was increased to twenty percent. Each of those ratings was effective retroactive to 30 January 2007.

The Board concluded that your receipt of a VA disability rating for migraine headaches is not probative of the existence of error or injustice in your Navy record. In this regard, the Board found that the VA assigned that rating without regard to the issue of your fitness for military duty as of 29 January 2007 vis-a-vis the headaches. As you have not demonstrated that you suffered from prostrating headaches which rendered you unfit to reasonably perform your duties, that you suffered from any unfitting conditions other than the ankle condition, or that the ankle condition was incorrectly rated by the Department of the Navy, the Board was unable to recommend 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