



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

JPE
Docket No. 05305-10
11 April 2011



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 31 March 2011. 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 were evaluated by the Physical Evaluation Board (PEB) on 5 December 2007 and found unfit for duty because of residuals of a shoulder injury rated at 20% disabling. You accepted the findings of the PEB on 16 March 2008, and waived your right to a formal hearing. You were honorably discharged with entitlement to disability severance pay on 8 May 2008 in accordance with the approved findings of the PEB. Effective 9 May 2008 the Department of Veterans Affairs (VA) awarded you disability ratings of 20% for the shoulder condition, 30% for an adjustment disorder, separate ratings of 10% for conditions of your lumbar spine, right elbow and each knee, 20% for tinnitus, and 0% for a healed nasal fracture, hypertension and onychomycosis. Your combined rating was 70%.

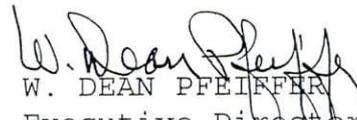
Your receipt of VA ratings for multiple conditions not rated by the PEB was not considered probative of the existence of error or

injustice in your naval record because the VA assigned those ratings without regard to the issue of your fitness for military duty vis-à-vis each of those conditions. As there is no indication in the available records that any of the additional conditions rated by the VA rendered you unfit for duty on 8 May 2008, the Board was unable to recommend favorable action on your request.

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 PFEIFFER
Executive Director