



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

JRE
Docket No. 07459-10
4 March 2011

[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 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 found fit for duty by the Physical Evaluation Board on 29 June and 26 July 2006 notwithstanding your long history of lower back pain. You were honorably discharged on 31 December 2006 by reason of completion of required active service. Following your discharge, the Department of Veterans Affairs (VA) awarded you disability ratings of 50% for sleep apnea, 20% for a condition of your left shoulder; 10% for seven conditions; and 0% for five conditions. In addition, the VA denied your request for service connection for five conditions.

Your receipt of disability ratings from the VA is not probative of the existence of error or injustice in your naval record, because those ratings were assigned without regard to the issue of your fitness for military duty on the date of your voluntary discharge from the Marine Corps. Although you received disability ratings from the VA for multiple conditions, you have not demonstrated that any of them rendered you unfit for duty. The Board noted that sleep apnea is not unfitting per se, and the available records do not establish that it caused excessive daytime somnolence or other possibly unfitting symptoms.

In the absence of evidence which demonstrates that you were unfit to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability on 31 December 2006, the Board was unable to recommend favorable action on your request. 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