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

Docket No. 10964-09
14 March 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. You requested that the Secretary of the Navy declare your discharge erroneous, and that your record be corrected to show that you were retired by reason of physical disability.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 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. The Board also considered the enclosed advisory opinion furnished by a psychiatric resident assigned to the [redacted] and your response thereto.

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 with regard to your request for disability retirement. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In addition, it concluded that your receipt of disability ratings from the Department of Veterans Affairs (VA) for multiple conditions is not probative of the existence or error or injustice in your naval record because the VA awarded those ratings without regard to the issue of your fitness for naval service at the time of your discharge.

The Board carefully considered your contentions to the effect that the provisions of MILPERSMAN section 1910-120 were not properly applied in your case and that your request for counsel was improperly denied. The Board noted that he provisions of MILPERSMAN you cited apply to enlisted separations. It was not persuaded that you were improperly referred for psychiatric evaluation, you were forced to make a statement against your interest, or that you were suitable for naval service. The Board did not accept your contention concerning the alleged denial of your right to appointed counsel for consultation.

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.

You are reminded of your right to apply to the Naval Discharge Review Board for change of the reason and authority for your discharge; however, the NDRB cannot change the basis of a discharge to physical disability separation or retirement.

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.

Enclosure