



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

JRE  
Docket No. 09081-07  
19 September 2008



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 11 September 2008. 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.

The Board found that you reenlisted in the Navy Reserve on 21 September 2003 for a term of six years. You were ordered to active duty on 1 March 2004, in connection with Operation Iraqi Freedom. You received multiple shrapnel wounds to your extremities in a mortar attack on 2 May 2004. You were examined and found physically qualified for release from active duty on 15 November 2004. You were released from active duty on 6 January 2005. On 26 January 2005, the Department of Veterans Affairs (VA) granted you service connection and a combined disability rating of 60%, as follows: residuals of shell fragment wound of left hand and index finger, 20%; headaches,

tinnitus, posttraumatic stress disorder, traumatic arthritis of the left knee, residuals of fragment wound of right calf, residuals of fragment wound of left thigh, each rated at 10%; and three conditions rated at 0%. The rating decision indicates that the rated conditions were individually productive of minimal or mild impairment. The VA denied your requests for service connection and disability ratings for nine conditions it did not find or determined were not incurred in or aggravated by your naval service. On 17 August 2007, the VA increased the rating for the posttraumatic stress disorder from 10 to 30%, effective 28 March 2007, for a combined rating of 70%.

The Board concluded that your receipt of VA disability ratings for multiple conditions effective the day following your release from active duty is not probative of the existence of material error or injustice in your Navy record. In this regard, the Board noted that the VA assigned those ratings without regard to the issue of your fitness to reasonably perform the duties of your office, grade, rank or rating by reason of physical disability. As you have not demonstrated that you were unfit for duty on 6 January 2005, the Board was unable to recommend any 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,



ROBERT D. ZSALMAN  
Acting Executive Director