DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX   JRE
WASHINGTON DC 20370-5100   Docket No. 04018-08
23 March 2009

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 19 March 2009. 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 on 19 June 2002, the Physical Evaluation board (PEB) made preliminary findings that you were unfit for duty because of degenerative joint disease of the left knee, which was ratable at 10% disabling. The diagnosis of major depressive disorder, single episode, moderate, in partial remission, was classified as a category III condition, that was not separately unfitting and did not contribute to the unfitting joint disease. The diagnosis of alcohol dependence, in early full remission, was classified as a condition that did not constitute a physical disability. You accepted those findings on 27 June 2002, and you were discharged with entitlement to disability severance pay on 21 November 2002.

The Department of Veterans Affairs (VA) awarded you a combined disability rating of 60% effective 22 November 2002, for your knee condition (30%), posttraumatic stress disorder (30%), degenerative disc disease L5-S1 with ligamentous strain (10%), and chronic eczema (10%). The rating for the posttraumatic stress disorder was increased to 100% effective 9 March 2003.

The Board concluded that your receipt of substantial disability ratings from the VA effective the day after you were discharged from the Navy is not probative of the existence of error or injustice in your Navy record. In this regard, it could not find any indication in your naval record that you were suffering from posttraumatic stress disorder prior to your discharge, or that your depressive disorder was unfitting. The PEB assigned a rating of 10% to your knee condition under code 5003, as osteoarthritis, because you did not have a ratable limitation of motion in that joint. For reasons that were unclear to the Board, the rating VA rated your knee condition under VA code 5260 at 30%, which is assigned when there is an extremely limited range of motion in the knee. Such a limitation of motion is not documented in your record. The Board condluded that as the remaining conditions rated by the VA did not significantly interfere with your performance of military duty, there is no basis for rating them.

As you have not demonstrated that you were entitled to a disability rating of 30% or higher from the Department of the Navy as of the date of your discharge, 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,

W. DEAN PFEIFFER
Executive Director