



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

JRE
Docket No. 08555-07
12 December 2008

[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 4 December 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. In this connection, the Board substantially concurred with the findings and revised rationale of the hearing panel of the Physical Evaluation Board (PEB) that considered your case on 10 May 2005. A copy of the rationale is attached.

The Board noted that you accepted the findings of the PEB on 25 October 2005, and expressly declined the opportunity for another hearing before the PEB. The Board concluded that the disability ratings you received from Department of Veterans Affairs (VA) effective 16 November 2005 and 13 December 2006 are not probative of the existence of error or injustice in your naval record. In this regard, the Board found that those ratings were

based in large part on the results of psychiatric evaluations you underwent on 9 August and 13 December 2006, respectively, rather than an assessment of your condition as of 15 November 2005, when you were discharged from the Marine Corps. The Board noted that although the VA may assign or modify disability ratings at any time, as warranted by changes in the nature or severity of rated conditions, rating determinations made the military departments are fixed as of the date of a service member's separation or permanent retirement. As you have not demonstrated that you were entitled to a disability of 30% or higher from the Department of the Navy on 15 November 2005, the Board was unable to recommend 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