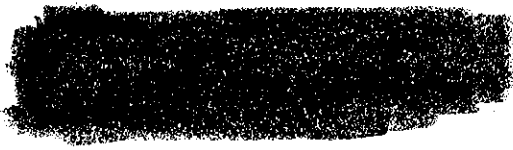




DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE

Docket No. 11886-08  
26 October 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 3 September 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 7 May 1998, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty due to chondromalacia of the right knee and that the disability was ratable at 10%. You accepted those findings on 15 August 2008 and waived your right to a formal hearing before the PEB. In a message dated 28 August 2008, the Commander, Navy Personnel Command, directed that you be discharged with entitlement to disability severance pay. Thereafter, you changed your mind and requested that you be retained on active duty. No

action was taken on that request because your case had been finalized by the PEB.

The Board concluded that your belated decision to request retention in the Navy Reserve in lieu of discharge, and to undergo elective knee surgery, are insufficient to demonstrate that you were improperly found unfit for duty by the PEB, or to warrant rescinding the orders that directed your discharge from the Navy Reserve. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board suggested that you consider applying for reenlistment in the Navy Reserve if you believe you are fit for duty at the present time.

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