



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

JRE
Docket No. 12114-08
29 June 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 25 June 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 did not accept your contention to the effect that a line of duty investigation (LODI) was not conducted in your case. It noted that an LODI was completed on 26 January 1998, and that in the opinion of the investigating officer, your injuries were incurred as the result of your own misconduct and not in the line of duty. You were informed of the findings, opinions and recommendation of the investigating officer on 20 February 1998. The report of investigation was approved by the appointing authority on 9 March 1998; however, on 24 March 1998, the Chief of Naval Education and Training (CNET), returned the ROI to the appointing authority for compliance with section 0221


of the Manual of the Judge Advocate General (JAG MANUAL) then in effect. After being accorded those rights on 11 May 1998, you declined to make a statement in your behalf. On 28 May 1998, CNET concurred with the opinion of the investigating officer that your injuries were incurred not in the line of duty and due to your own misconduct.

On 7 July 1998, the Record Review Panel of the Physical Evaluation Board (PEB) found you unfit for duty by reason of physical disability that was incurred as a result of your own intentional misconduct or willful neglect. You accepted the findings of the PEB on 14 October 1998, and you were discharged without entitlement to disability benefits on 27 November 1998. On 20 March 2000, the Department of Veterans Affairs denied your request for service connection for your disabilities after determining that they were not incurred in the line of duty.

In the absence of evidence which demonstrates that your disabilities were incurred in the line of duty, 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