



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

JRE

Docket No. 00171-09

25 March 2010

[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 25 February 2010. 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.

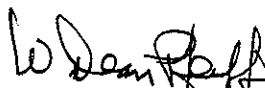
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You were released from active duty on 31 July 1996 and transferred to the Temporary Disability Retired List (TDRL) the following day with a combined disability rating of 30% for conditions of your feet and lumbar spine. On 10 July 1998, the Physical Evaluation Board (PEB) made preliminary findings that you remained unfit for duty and were entitled to a combined disability rating of 40%. On 28 July 1998, you accepted those findings and waived your right to a formal hearing. The findings were approved on 30 July 2008, and you were permanently retired by reason of physical disability.

Your receipt of a disability rating from the Department of Veterans Affairs (VA) for posttraumatic stress disorder is not probative of the existence of error in your record, because the VA assigned that rating without regard to the issue of your fitness for military service as of the date of your release from active duty. In the absence of evidence which demonstrates that you were unfit for duty due to posttraumatic stress disorder when you were transferred to the TDRL in 2006, there is no basis for the Board to assign a disability rating to that condition. 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 PFAFFER
Executive Director