



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

JRE
Docket No. 02421-09
8 April 2010

[REDACTED]

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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 8 April 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.

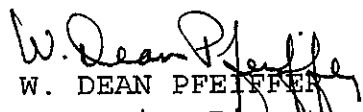
Your case was evaluated by a medical evaluation board (MEB) on 13 March 2008. The MEB gave you diagnoses of right quadriceps tendon rupture, status-post repair with chronic weakness and tendinopathy; status-post wound infection and dehiscence of the wound; and lumbosacral degenerative joint disease without radicular symptoms. On 9 June 2008 the Physical Evaluation Board (PEB) reviewed your case and found you fit for duty. The PEB reconsidered and confirmed that finding on 23 July 2008. The President, PEB, denied your request for a formal hearing on 31 July 2008.

In a rating decision dated 1 November 2008, the Department of Veterans Affairs (VA) awarded you separate disability ratings of 0% for three conditions; 10% for left shoulder strain, post-operative right patella tendon with patellofemoral syndrome and strain, a scar on your right knee, tinnitus, and an adjustment disorder; and 20% for lumbar strain with intervertebral disc syndrome, right sciatic nerve, with spondylolisthesis and spondylolysis. Your combined VA rating of 60% was effective from 13 October 2008.

Your receipt of VA disability ratings for multiple conditions is not probative of the existence of material error or injustice in your naval record because the VA assigned those ratings without regard to the issue of your fitness for military duty at the time of your release from active duty. In addition, the findings of the VA suggest that the rated conditions were found to be productive of minimal to mild impairment of functioning. As you have not demonstrated that you were unfit to reasonably perform the duties of your rank at the time in question, 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