



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

JRE  
Docket No. 04832-09  
9 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.

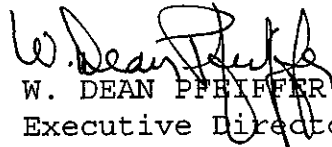
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 March 2010. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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. In this regard, the Board found that all veterans who require the use of a continuous positive airway pressure (CPAP) device to treat obstructive sleep apnea (OSA) at the time of separation are entitled to a Department of Veterans Affairs (VA) disability rating of 50%. That rating is assigned without regard to the issue of fitness for military duty. As you were found fit for duty following a period of limited duty with a diagnosis of OSA, and you have not demonstrated that you had become unfit for duty as of 14 May 2009, there is no basis for granting your request for disability separation or retirement. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board requested that you be advised that you have the right to request correction of your record to show that you were retained on active duty rather than separated by reason of a condition not a disability on 14 May 2009.

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