



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

JRE  
Docket No. 07922-09  
23 November 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 19 November 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.

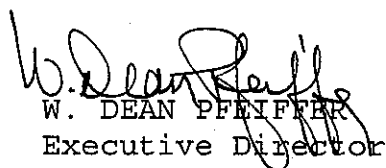
The Board found that you were released from active duty on 8 August 2003 and transferred to the Temporary Disability Retired List with a disability rating of 40% for diabetes mellitus. The Physical Evaluation Board (PEB) reevaluated your condition on or about 3 December 2008, and made the preliminary finding that you were fit for duty. You accepted that finding on 17 December

2008, and your case was finalized by the President, PEB, on 19 December 2008.

In the absence of evidence which demonstrates that you were unfit for duty by reason of physical disability on 8 August 2003 due to the effects of sleep apnea, there is no basis for correcting your record to show that you received a disability rating for that condition from the Department of the Navy. Your receipt of a disability rating from the Department of Veterans Affairs (VA) for that condition would not be probative of the existence of error or injustice in your naval record, because the VA assigns disability ratings without regard to the veteran's fitness for military duty as of the date of separation or permanent retirement. 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