



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

JRE
Docket No. 08115-09
8 June 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 3 June 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.


The Board found that notwithstanding the diagnosis of Huntington's disease that you were given in 2008, there is no indication in the available records that you were unfit for duty by reason of physical disability in 2002, when you were discharged under other than honorable conditions by reason of misconduct based on a lengthy absence without authority and three instances of wrongful use of illegal drugs. You would not have been entitled to disability separation or retirement even if you had been unfit for duty in 2002, because your discharge by reason of misconduct would have taken precedence over disability evaluation processing. Accordingly, your request for correction of your record to show that you were discharged

by reason of physical disability has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board did not consider your request for upgrade of your discharge to honorable because you did not exhaust an available administrative remedy by applying to the Naval Discharge Review Board (NDRB). Enclosed is a DD Form 2923 which you should complete and submit to the NDRB. Please note that the NDRB does not have the authority to change the basis of your separation to physical disability.

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