



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

JRE
Docket No. 11486-10
11 August 2011

[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 11 August 2011. 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 reenlisted in the Navy on 25 October 2000 with 3 years, 11 months and 11 days prior active service. On 6 November 2003, the Physical Evaluation Board (PEB) found you fit for duty notwithstanding your conditions of pathological gambling, alcohol dependence and depressive disorder. In addition, it is noted in your disability evaluation proceedings that you were not within Navy weight standards, as you were 5'9" tall and weighed 230 lbs. You underwent a microdiscectomy at the L4-S1 level on 22 June 2004. On 11 March 2004 you underwent a post-surgical evaluation conducted by an orthopedic surgeon and were found fit for duty. On 2 April 2004, the Chief of Naval Personnel directed that you be processed for

separation by reason of a condition, not a disability, based on your unsuitability for operational duty because of the effects of the depressive disorder, alcohol dependence and pathological gambling. After being advised of your rights in connection with the proposed separation, you waived your right to consult with and be represented by counsel and to present your case to an administrative discharge board. You were discharged for the convenience of the government on 19 April 2004 by reason of a condition, not a disability. Thereafter, the Department of Veterans Affairs (VA) awarded you a disability rating of 30% for depression and anxiety, and separate 10% ratings for gastroesophageal reflux disease, irritable bowel syndrome, and a condition of your lumbar spine.

Your receipt of disability ratings from the VA is not probative of the existence of error or injustice in your naval record because the VA assigned those ratings without regard to the issue of your fitness for military duty as of the date of your discharge. In the absence of evidence which demonstrates that the PEB erred when it found you fit for duty, or that your lower back condition was unfitting on 19 April 2004, the Board was unable to recommend favorable action on your request. 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