



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

JRE
Docket No: 83-99
19 October 1999

Dear [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 7 October 1999. 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 on 1 July 1996, the Record Review Panel of the Physical Evaluation Board (PEB) made preliminary findings that you were fit for duty, notwithstanding your long standing back condition and urinary incontinence, which had largely resolved. You were advised of those findings on 16 July 1996, and acknowledged that you had until 31 July 1996 to complete an election of options form. As you apparently did not make a timely election of options, your acceptance of the findings of the PEB was presumed, and the finding of fitness was approved by the President, PEB. You were discharged from the Navy on 20 September 1996, by reason of weight control failure. On 21 February 1997, the Department of Veterans Affairs (VA) awarded you a 40% disability rating for degenerative disk disease of the lumbar spine, and 0% ratings for asthma, resection of a lipoma, and urinary incontinence. It denied service connection for a chronic adjustment disorder and left hip strain.

The Board did not accept your contention that you were "...not allowed to see the PEB comments", as the available records indicate you were advised of the findings of the PEB. It

was not persuaded that you required further medical evaluation prior to your separation, or that your condition had deteriorated to such an extent by 20 September 1996 that you were unfit for duty. In addition, it noted that there was no requirement that you undergo another discharge physical examination after you had been found fit for duty by the PEB. The Board concluded that your receipt of VA disability ratings does not establish that your discharge from the Navy was erroneous. In this regard, it noted that the VA awards disability ratings without regard to the issue of fitness for military duty. As you have not demonstrated that you were unfit to perform the duties of your office, grade, rank or rating, 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