



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4448-98

12 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 30 September 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 7 May 1997, the Record Review Panel of the Physical Evaluation Board made preliminary findings that you were unfit for duty because of chronic mechanical low back pain, rated at 10% under VA code 5295. You accepted those findings on 9 May 1997, and you were discharged with entitlement to disability severance pay on 13 June 1997. On 20 January 1998, the Department of Veterans Affairs (VA) rated your condition under VA code 5295 at 40%, which is the maximum rating authorized under that code.

The Board concluded that the 10% rating assigned by the Physical Evaluation Board is a more accurate assessment of the degree of disability caused by your back condition at the time of your discharge than is the VA rating of 40%. It appeared to the Board that the VA rating was based in large part on your subjective complaints, rather than objective findings. The Board was not persuaded that your condition was severe prior to your discharge, or that it met the criteria for a 40% rating. 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