



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

JRE  
Docket No: 5506-00  
13 June 2001

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 24 May 2001. 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 22 January 1998, the Physical Evaluation Board made a preliminary finding that you were fit for duty. On 12 February 1998, you requested that the PEB reconsider the finding of fitness, and submitted extensive documentation in support of that request. On 24 April 1998, the PEB determined that you were unfit for duty because of residuals of a right ankle injury, rated at 10% under Department of Veterans Affairs (VA) code 5271; bilateral carpal tunnel syndrome, rated under VA code 5299-8515, at 10%, right, and 0%, left; a ventral hernia, rated at 0% under VA code 7339; and obstructive sleep apnea, rated at 0% under VA code 6847. Raynaud's phenomenon of your right third digit was listed as a category II condition, as contributing to an unfitting condition, but not warranting a separate rating. Five additional conditions were placed in category III, as conditions which were not separately unfitting, and did not contribute to an unfitting condition. On 8 May 1998, you accepted those findings contingent upon your being retained on active duty until the birth of your child, which was expected during August 1998. Your condition was accepted and you were retained on active duty until 30 September 1998, when you were discharged with entitlement to disability severance pay.

The Board rejected your unsubstantiated contention to the effect that the determinations of the PEB were based on misleading and inaccurate information which prevented it from making "a correct, intelligent determination" on your disability rating. It appeared to the Board that you were accorded a full and fair review by the PEB, that your position was well articulated and presented to the PEB, and that your rights and interests were not compromised at any point during the disability evaluation process.

The fact that the VA awarded you a combined disability rating of 80% was not considered probative of the existence of error or injustice in your case. In this regard, the Board noted that the VA Schedule for Rating Disabilities has been modified by DOD Directive 1332.39 of 14 November 1996, Application of the Veterans Administration Schedule for Rating Disabilities, and SECNAVINST 1850.4D. In addition, the VA rates all conditions it classifies as "service connected", without regard to the issue of fitness for military service, and ratings may be raised or lowered throughout a veteran's life time as the degree of severity of the rated conditions changes. The military departments are permitted to rate only those conditions which render a service member unfit for duty, or which contribute to an unfitting condition and warrant a separate rating. Disability ratings are fixed as of the date of separation or permanent retirement.

The Board noted that the VA is required to assign a rating of 50% for sleep apnea when use of a continuous positive air pressure (CPAP) device is used. That rating is assigned without regard to the actual degree of impairment caused by the sleep apnea. The VA awarded you a 50% rating, while classifying your condition as "mild". Although the use of a CPAP device often renders a service member unfit for duty, as apparently occurred in your case, ratings for sleep apnea are based on the degree of impairment caused by the sleep apnea. The minimum rating for use of the CPAP device does not apply to the military. The PEB assigned a 0% rating in your case because the sleep apnea was mild, and productive of no more than minimal industrial impairment. With regard to your lower extremity condition, the Board noted that the VA awarded you a 30% rating for ankylosis of the ankle joint, even though the joint retains significant useful range of motion. The military departments are prohibited from assigning a rating for ankylosis unless there is complete bony fixation of the joint, or a limitation of motion so severe in degree that the amount of movement is negligible. Concerning your mild carpal tunnel syndrome, the Board was not persuaded that you were entitled to a rating in excess of 0% for your left arm at the time of your discharge from the Navy. The remaining conditions which were rated by the VA, but not the PEB, were productive of no significant industrial impairment, if any at all, and were not considered unfitting or ratable by the Department of the Navy.

In view of the foregoing, 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