



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 5990-98

21 May 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 13 May 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 8 December 1993, a medical board gave you a diagnosis of low back pain with left radicular component of unknown etiology, and referred your case to the Physical Evaluation Board. On 14 February 1994, the Record Review Panel of the Physical Evaluation Board made preliminary findings that you were unfit for duty because of your back condition, which it rated at 20% under VA code 5295, as lumbosacral strain. You accepted the findings of the Record Review Panel on 28 March 1994, and were discharged with entitlement to disability severance pay on 6 May 1994. Following your discharge, the Department of Veterans Affairs rated your back condition at 40% under VA code 5293 for intervertebral disc syndrome, and later increased the rating to 60%.

The Board was not persuaded that you met the criteria for a rating under VA code 5293 at the time of your discharge, or that you were entitled to a higher rating under code 5295 for lumbosacral strain at the time of your discharge. It noted that your VA rating was based on the increase in severity of your condition which occurred following your discharge from the Navy, which may have been caused by such factors as a substantial increase in your body

weight. The Board also noted that the VA based its ratings primarily on your subjective complaints rather than objective findings of back pathology. 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