



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

JRE
Docket No: 6145-98
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 you underwent a pre-retirement physical examination on 12 March 1981. Your dumping syndrome was noted but not considered disqualifying by the physician who examined you and determined that you were physically qualified. Although you may have contracted the hepatitis C virus as a result of the blood transfusions you received during January 1981, there is no indication that significant hepatitis had developed prior to your transfer to the Retired List later that year. The Board noted that as you had performed your duties until you submitted a request for voluntary retirement on 5 November 1980, you would have been presumed fit for duty had you been referred to the Disability Evaluation System. That presumption could have been overridden only by evidence establishing that you were improperly retained on active duty for a period of time when you were actually unfit for duty, or that there was an acute, grave illness or injury or deterioration of physical condition occurring prior to or coincidentally with the application for retirement. Your gastric condition, the residuals of surgery therefor, and possible exposure to the hepatitis C virus were insufficient to rebut the presumption of fitness. The fact that the Veterans Administration has awarded you a substantial disability rating for the dumping syndrome is

not probative of your contentions of error or injustice, because that agency awards disability ratings without regard to the issue of fitness for military duty. 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