



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 5355-99

4 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 23 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 you underwent a periodic examination on 26 January 1999. You stated that you had no gastrointestinal complaints at that time. The results of the physical examination and laboratory testing were essentially normal, and your post surgical course was described as "stable". The physician did note, however, that you required a "specific" diet to control dumping symptoms, and he felt that you should be retained on the Temporary Disability Retired List. The Physical Evaluation Board reviewed your case on 3 May 1999, and found you fit for duty. You were notified of those findings by letter dated 12 May 1999. As you did not make a timely response to the notification letter, your acceptance was presumed and your case finalized. In a letter dated 3 July 1999, you were notified by the Commanding Officer, Naval Reserve Personnel Center, of your right to apply for reenlistment in the naval service.

The Board concluded that the finding of fitness made in your case by the Physical Evaluation Board was warranted, given the absence of unfitting residuals of your stomach surgery at the time of your final periodic examination, and your failure to make timely objection to the

finding of fitness. It noted that the recommendation that you be retained on the Temporary Disability Retired List which was made of the physician who examined you on 26 January 1999 was not binding on the Physical Evaluation Board. The Board concluded that the subjective increase in symptomatology you experienced following the periodic examination was insufficient to demonstrate that the finding of fitness was erroneous or unjust. 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