



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

JRE  
Docket No: 91-01  
17 August 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 26 July 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 you served on active duty in the Navy from 19 December 1989 to 18 June 1993, when you were discharged by reason of physical disability, pursuant to the approved findings of the Physical Evaluation Board, which you accepted. You underwent elective spinal surgery on 8 August 1993. The Department of Veterans Affairs (VA) awarded you a 10% rating effective from 19 June 1993. A temporary, convalescent rating of 100% was in effect from 10 August 1993 to 1 June 1994, when the 10% rating was restored. On 15 November 1994, the post-operative VA rating was increased to 40% retroactive to 19 June 1993. The increase was based, in part, on the results of an examination conducted on 25 October 1994.

The Board noted that ratings assigned by the military departments are fixed as of the date of the service member's discharge, and are based on the degree of disability extant at that time. Ratings may not be increased to account for changes in the disability or related conditions which occur following discharge. The VA is not subject to such constraints, and may raise or lower disability ratings throughout a veteran's life time. As noted above, the VA

retroactively increased your disability rating based in part on the results of an examination conducted more than one year following your discharge.

In the absence of evidence which demonstrates that your disability should have been rated by the Navy at or above 30% disabling on 18 June 1993, the Board was unable to recommend any corrective action in your case. 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