



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

JRE
Docket No: 1667-01
30 October 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 17 October 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 21 May 1992, the Record Review Panel of the Physical Evaluation Board made preliminary findings that you were unfit for duty because of mechanical low back pain, which it rated at 10%. You accepted those findings on 16 June 1992, and you were discharged with entitlement to disability severance pay on 14 August 1992. The Department of Veterans Affairs (VA) initially rated your condition at 0%, and increased the rating to 40% on 17 July 1997. The latter rating, which was based on the results of examinations conducted in 1995 and 1997, was made retroactive to 22 March 1995.

The Board noted that disability ratings assigned by the military departments are fixed as of the date of separation or permanent retirement, whereas ratings assigned by the VA may be adjusted throughout a veteran's life time as the severity of the rated condition changes. In the absence of evidence which demonstrates that your back condition was ratable at or above 30% disabling as of 14 August 1992, 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