



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

JRE
Docket No: 4188-00
10 July 2001



Dear 

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 28 June 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 were discharged by reason of physical disability on 20 November 1992, with a 10% rating for asthma. On 12 May 1993, the Department of Veterans Affairs (VA) awarded you a 30% rating for asthma and 0% for residuals of a fracture of your hand. On 13 April 1994, the VA added ratings of 20% for a spinal disc condition, and 0% for an appendectomy scar and residuals of a fractured toe. The disc condition was rated on a presumptive basis, i.e., it was diagnosed and found to be 10% or more disabling within one year of your discharge from the Navy.

The Board noted that the military departments rate only those conditions which render a member unfit to perform the duties of his office, grade, rank or rating at the time of his separation or retirement, whereas the VA rates any condition it classifies as "service connected". That term includes those conditions incurred in, aggravated by, or traceable to military service, or derived from a service connected condition. The determination of whether a condition is service connected is made without regard to the issue of fitness for military service. In addition, VA ratings may be raised, lowered or added throughout a

veteran's life time as circumstances warrant, whereas ratings assigned by the military departments are fixed as of the date of separation or permanent retirement.

As you have not demonstrated that your pulmonary condition was ratable at or above 30% as of the date of your discharge, or that you suffered from a back/spinal disc condition which rendered you unfit for duty, 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