



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

JRE
Docket No: 5056-00
25 July 2001

[REDACTED]

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 24 May 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. In addition, the Board considered the comments of your counsel.

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 evaluated by a medical board on 5 April 1995, and given diagnoses of asthma and pleural effusion. On 4 May 1995, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of the asthma, which it rated at 10%. You accepted those findings contingent upon being retained on active duty until 31 August 1995. Your condition was accepted, and you were retained until 31 August 1995, when you were discharged by reason of physical disability with entitlement to disability severance pay. You were examined at a Department of Veterans Affairs facility on 25 November 1995, and reported that you occasionally experienced shortness of breath when you exerted yourself or failed to take your medications. The VA awarded you a 30% rating for the asthma, which at that time required asthmatic attacks separated by only 10-14 day intervals, with moderate dyspnea on exertion between attacks.

The Board noted that ratings for asthma assigned by the military departments are based on clinical impairment and response to treatment. It appears that your condition was mild, and

responded well to medical therapy. The Board was not persuaded that your condition met the criteria for a rating in excess of 10% at the time of your discharge from the Marine Corps. 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