



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

JRE
Docket No: 2290-01
15 February 2002

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 7 February 2002. 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 noted that you had a long history of lower back pain, which was first noted in 1991, and increased in severity after you gave birth in 1994. It does not appear that the back pain precluded you from performing your duties for any extended period of time during your enlistment.. You underwent a pre-separation physical examination on 10 and 29 March 1999, and were found physically qualified for separation and to perform the duties of your rate at sea and on foreign shores. Your back complaints were noted by the examining physician, as were several other longstanding complaints, but none was considered disqualifying for further service. You denied having a history or current complaints of depression or excessive worry or nervous trouble of any sort; however, you did admit that you had been treated for an unspecified mental condition, which you "would explain." The physician did not comment on that disclosure. It appears, however, that you were referring to the psychological evaluations you had undergone which indicated that you had prominent maladaptive personality traits. You were discharged from the Navy on 21 July 1999, by reason of completion of required service, in grade E-4, having completed 10 years, 3 months and 19 days service. You were assigned a reenlistment code of RE-6. On 28 February

2000, the Department of Veterans Affairs (VA) awarded you service connection and ratings of 10% for scars, status post excision of fibroadenoma, sacroiliac joint dysfunction, residual of injury, and psoriasis, for a combined rating of 30%. You were diagnosed as suffering from depression and a borderline personality disorder on 16 March 2000. On 4 December 2000, the VA granted you service connection and a 30% rating for depression secondary to sacroiliac joint dysfunction, effective from date of diagnosis. On 22 May 2001, the VA increased the rating for your sacroiliac joint dysfunction to 40% effective from 22 July 1999. Your combined evaluation was increased to 50% from 22 July 1999, and 70% from 16 March 2000.

The fact that you have been awarded substantial disability ratings from the VA is not probative of the existence of error or injustice in your naval record. In this regard, the Board noted that the VA assigns disability ratings without regard to the issue of fitness for military service. In addition, ratings may be assigned, raised, and lowered throughout a veteran's lifetime, as new determinations of service connection are made, and the severity of service connected conditions changes. Unlike the VA, the military departments are permitted to assign disability ratings only in those cases where the service member has been found unfit for duty. Ratings are fixed as of the date of separation or permanent retirement. Although you had a long history of low back pain, that condition did not preclude you from performing your duties, or render you unfit for duty. It appears that the 40% rating you ultimately received from the VA for your spinal condition, although made retroactive to 1999, was based in large part on your subjective complaints, rather than objective findings, and on subjective deterioration of the condition which occurred in the years following your discharge. The fact that you have recently obtained a more precise diagnosis for your condition does not demonstrate that you were unfit for duty or otherwise demonstrate that your discharge was erroneous. There is no indication in available records that you suffered from a significant depressive disorder during your naval service, or that you were unfit for duty because of the effects of a ratable mental disorder.

In view of the foregoing, 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