



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

JRE
Docket No: 3507-02
18 November 2002

[REDACTED]

[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 November 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 found that you were released from active duty on 27 August 1992 and transferred to the Temporary Disability Retired List (TDRL) with a 30% rating under Department of Veterans Affairs (VA) code 5283, for talar malunion with pain. On 18 February 1993, the Department of Veterans Affairs, after independently evaluating your disability, awarded you a rating of 10% under code 5271, for limitation of motion of your right ankle joint, residual to a fracture. Your condition was reevaluated at a Navy facility on 31 October 1997, and the results of the examination were forwarded to the Physical Evaluation Board (PEB). On 15 December 1997, the PEB made preliminary findings that you remained unfit for duty, and that your disability was ratable at 20%. As you did not respond to the notification of the findings of the PEB, which were mailed to your address of record, your acceptance was presumed. Your case was finalized on 21 January 1998, when the President, PEB, requested that the Commandant of the Marine Corps effect your separation from the Marine Corps by reason of physical disability, with entitlement to disability severance pay.

The Board noted that VA code 5283 provides four rating for non-union or malunion of the

tarsal or metatarsal bones: 40% for loss of use of the foot; 30% for severe non-union or malunion; 20% for moderately severe; and 10% for moderate. VA code 5271 provides for a 20% rating for marked limitation of motion of the ankle, and 10% for moderate limitation of motion. It appeared to the Board that your condition fell somewhere between moderate and moderately severe, and as such, was not ratable above 20%. As you have not demonstrated that the PEB failed to rate your condition correctly, 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