



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

JRE
Docket No. 01647-03
6 May 2003



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 April 2003. 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 from the Marine Corps on 15 November 1994 by reason of physical disability, because of the residual effects of an inguinal hernia repair. You received a rating of 10%, for the minimal impairment of productivity associated with your condition. Effective 16 November 1994, the Department of Veterans Affairs (VA) awarded you a 10% rating for inguinal hernia repair with ilioinguinal nerve entrapment. The rating was increased to 30% effective 4 June 2002, based on the increase in pain you had experienced in the years immediately preceding your request for an increased rating. The VA rating officials noted that 10% was the maximum permissible rating for a disability of the ilioinguinal nerve; however, they felt that

your symptoms were "similar to that described for the 30 percent evaluation for post-operative hernia", i.e., a recurrent hernia not well supported by a truss or not readily reducible, and thus warranted a 30% rating. That determination was made notwithstanding the fact that there was no recurrence of the hernia, or requirement for support therefor.

The Board noted that although the VA may change disability ratings throughout a veteran's lifetime, as the severity of rated conditions changes, ratings assigned by the military departments are fixed as of the date of separation. As you have not demonstrated that your condition met the criteria for a 30% rating at the time of your discharge, the Board was unable to recommend 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