



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

JRE
Docket No. 11295-07
26 September 2008




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 25 September 2008. 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 underwent a pre-separation physical examination on 25 October 1989 and were found qualified for separation. You were voluntarily released from active duty on 24 November 1989 and honorably. You were assigned a reenlistment code of RE-1A, to indicate that you were qualified and recommended for separation at that time. Shortly after you were discharged, the Department of Veterans Affairs (VA) awarded you a disability rating of 10% for a condition of your lumbar spine.

In order to qualify for disability retirement, a service member who has not completed 20 years of service must be unfit to reasonably perform the duties of his office, grade, rank or rating by reason of physical disability which is ratable at or above 30% disabling. There is no indication in your naval record that you were unfit for duty on 24 November 1989. The Board noted that even if you had been unfit for duty on that date, your initial VA rating decision suggests that your condition would not have been ratable at 30% or higher, and you would not have met the minimum rating criteria for disability retirement. 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