



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

JRE
Docket No. 00009-08
21 November 2008

[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 14 November 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 did not accept your contention that you were not permitted to appear before a physical evaluation board (PEB). In this regard, the Board noted that your record contains a letter dated 11 January 1991 from your disability counselor which indicates that you informed him on 2 January 1991, that you would not request reconsideration of the findings made by the PEB in your case, and that you were going to "presumed accept" the findings. The PEB presumed your acceptance of its findings on 11 January 1991, and you were discharged with entitlement to severance pay on 23 April 1991. Effective 24

April 1991, the Department of Veterans Affairs awarded you a combined disability rating of 20% for bilateral knee conditions. The VA added a 10% rating for a back condition effective 30 September 2002. The rating for the left knee condition was increased to 20% effective 22 May 2004, and that for the right knee to 20% effective 4 June 2004.

The Board concluded that the rating actions taken by the VA in your case in 2002 and 2004 are not probative of the existence of error or injustice in your naval record. Although the VA may amend ratings throughout a veteran's lifetime as the severity of rated conditions changes, and add ratings as new conditions develop secondary to a previously rated condition, disability ratings assigned by the military departments are fixed as of the date of separation or permanent retirement.

In view of the foregoing, and as you have not demonstrated that you were entitled to a combined disability rating of 30% or higher from the Department of the Navy at the time of your discharge, 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