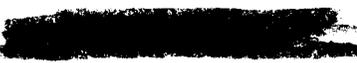




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 01495-08
26 January 2009



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 15 January 2009. 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.

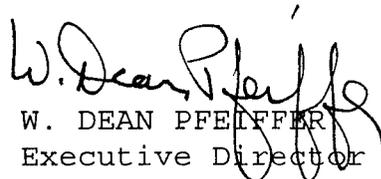
The Board found that on 7 September 2007, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of a condition of your lower back, which it rated at 20% disabling. On 28 September 2007, you accepted those findings and waived your right to submit new evidence and to demand a formal hearing before the PEB. Your case was finalized by the President, PEB, on 5 October 2007, and you were discharged with entitlement to severance pay on 15 January 2008. On 1 April 2008, the Department of Veterans Affairs (VA) awarded you a 20% rating for a spinal condition, 30% for benign positional vertigo, separate ratings of 10% for tinnitus and

conditions of your right clavicle and shoulder, left shoulder, left knee, right knee, and right ankle, and ratings of 0% for seven other conditions, for a combined final rating of 70%.

The Board found that the VA rates all conditions listed in its schedule for rating disabilities that were incurred in or aggravated by a veteran's period of service, and that it does so without regard to the issue of the veteran's fitness for military service at the time of the veteran's separation from the service. The military departments are permitted to rate only those conditions which render the service member unfit for duty, or contribute to an unfitting condition and warrant a separate rating, at the time of separation or retirement. The Board concluded that there is insufficient objective evidence to demonstrate that the benign positional vertigo or any of the conditions rated by the VA at 0 and 10% disabling rendered you unfit for duty or contributed to your unfitting spinal condition prior to your discharge from the Navy. 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 PFELFFER
Executive Director