



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

JRE

Docket No. 07874-08

23 March 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 19 March 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 31 January 2002, the Physical Evaluation Board made preliminary findings that you were unfit for duty because of persistent low back pain that was ratable at 10% disabling. You received those findings on 6 February 2006, and accepted them on 19 February 2002. You were discharged with entitlement to disability severance pay effective 31 March 2002. On 4 June 2002, the Department of Veterans Affairs (VA) awarded you disability rating of 20% for a condition of your left hip/groin, 20% for your lower back, and 0% for migraine headaches. As your back condition worsened over time, the rating for that condition was increased. In addition, you were awarded

ratings for newly diagnosed conditions the VA determined were related your back condition.

The Board concluded that the disability ratings you received from the VA are not probative of the existence of error or injustice in your naval record. Those ratings were assigned without regard to the issue of your fitness for military duty as of 31 March 2002, and many were based on changes in your physical condition that occurred after you were discharged. Although the VA may rate any condition that was incurred in, aggravated by, or related to a period of service, as well as modify and add ratings throughout a veteran's lifetime, the military departments rate only those conditions that render a service member unfit for duty, and ratings are fixed as of the date of the service member's separation or permanent retirement. As you have not demonstrated that your hip/groin condition was unfitting on 31 March 2002 and ratable at 20% or higher, and/or that your back condition was ratable at 30% or more at that time, there is no basis for 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