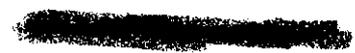




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 11371-08
7 October 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 17 September 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 you were released from active duty on 26 February 1987 and transferred to the Temporary Disability Retired List with a disability rating of 30%. On 5 April 1990 the Records Review Panel of the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty due to Chron's colitis and probable ileitis, which it rated at 10%. You accepted those findings on 30 May 1990, and were discharged with entitlement to disability severance pay. The Department of Veterans Affairs (VA) rated your condition at 10% from 27 February 1987 to 28 February 1990, 0% from 1 March 1990 to 14 February 2007, and 30% effective 15 February 2007.

The Board concluded that you failed to demonstrate that your disability was ratable at or above 30% disabling when you were discharged from the Navy in 1990. The fact that the VA recently increased your disability rating to 30% is not probative of the existence of error or injustice in your naval record, because that rating was assigned because your condition had become more severe. Although the VA may raise or lower disability ratings throughout a veteran's lifetime, ratings assigned by the military departments are fixed as of the date of separation or permanent retirement, absent a showing of material error or injustice and favorable action by the Board. As you have not demonstrated that the rating you were assigned by the PEB in 1990 is erroneous or unjust, 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