



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

JRE

Docket No. 12002-08
8 September 2009

[REDACTED]

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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 in which you requested that the diagnosis of "Scapula Peraneal[sic] Muscular dystrophy" that appears in your record be changed to "Inclusion Body Myositis", and, in effect, that your condition be classified as "combat-related".

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 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. In addition, the Board considered the enclosed advisory opinion dated 26 August 2009 from the Specialty Advisor for Neurology.

After careful and conscientious consideration of the entire record, and notwithstanding the comments contained in the advisory opinion concerning the diagnosis in question, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, the Board concluded that the establishment of a more definitive diagnosis of your disability more than 10 years after you were retired does not establish that diagnosis made in 1988 is materially erroneous or unjust. The Board concluded that granting your request would not accord you effective relief because the requested action would not affect the disability

rating of 100% you were assigned by the Department of the Navy. In addition, the Board was not persuaded that your disability was caused by a specific combat-related event. 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