



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

JRE
Docket No. 12440-08
23 November 2009

[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 19 November 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.

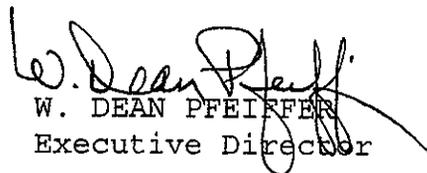
The Board found that you were transferred to the Temporary Disability Retired List effective 1 August 1970 retired by reason of physical disability on 31 July 1970 with a disability rating of 30% for residuals of a gunshot wound of your left shoulder. You were permanently retired with a 30% rating in 1973. On 31 March 1978 the Veterans Administration (VA) assigned a 20% to your shoulder condition. The VA added a 10% rating for a depressive disorder in 2005, and increased the

rating to 20% effective 21 February 2007. The VA raised the rating for the shoulder condition to 30% effective 6 June 2007.

The Board concluded that your receipt of disability compensation from the VA for a depressive disorder is not probative of the existence of error or injustice in your naval record, because the VA assigned the disability rating more than thirty years after you were retired, and without regard to your condition as of the date of your retirement. Although the VA may assign disability ratings throughout a veteran's lifetime, the military departments may do so only at the time of a service member's separation or retirement. As you have not demonstrated that you should have received a disability rating for a depressive disorder or posttraumatic stress disorder as of the date of your permanent retirement, or that your shoulder disability was ratable at more than 30% disabling at that time, 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