



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

JRE
Docket No. 651-09
25 February 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 12 February 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 reenlisted in the Navy on 30 September 1992 for two years. You underwent a pre-separation physical examination on 21 June 1994 and were found qualified for separation. You stated that your health was "good" at that time despite your complaints of shortness of breath, chest, back and myofascial pain, and history of hypertension, each of which was classified as "NCD" (not considered disqualifying) by the physician who conducted the examination. You were discharged on 29 September 1994, in grade E-4, by reason of non-retention on active duty/high year tenure.

On 9 March 1995, the Department of Veterans Affairs (VA) awarded you 0% disability ratings for lumbosacral strain, pseudofolliculitis barbae, myofascial pain syndrome, a scar on little finger, and arthritis of the cervical spine. The VA denied your request for service connection for three other conditions. Although you had numerous minor conditions that did not warrant individual compensable ratings, VA rating officials determined that the combination of those minimal disabilities "clearly" presented you with an unspecified "employment handicap" which warranted a combined overall rating of 10%. That combined rating was increased to 40% effective 2 December 1998, and to 50% effective 30 August 2006.

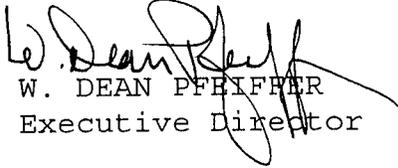
Your receipt of a compensable disability rating on 9 March 1995 does not demonstrate the existence of error or injustice in your naval record. In this regard, the Board noted that the VA assigned that rating without regard to the issue of your fitness for military duty on 29 September 1994, when you were released from active duty. Although the VA may rate any condition that was incurred in or aggravated by a veteran's period of military service, and adjust assigned ratings to reflect changes in the occupational and/or social impairment caused by rated conditions, the military departments may assign disability ratings only in those cases where a service member has been found unfit to reasonably perform his military duties by reason of physical disability. Ratings are fixed as of the date of separation or permanent retirement and may not be adjusted thereafter, unless the Board determines that the ratings are erroneous or unjust.

In view of the foregoing, and as you have not demonstrated that you were unfit for further service by reason of physical disability on 29 September 1994, the Board was unable to recommend any 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