



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

JRE
Docket No. 01980-09
25 January 2010

[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 14 January 2010. 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.

You were released from active duty on 28 February 1989 and transferred to the Temporary Disability Retired List (TDRL) due to the residual effects of a broken leg. Your condition was reevaluated by the Physical Evaluation Board in 1994. As your condition was no longer ratable at thirty percent or higher, and you had been on the TDRL for five years, you were discharged with entitlement to disability severance pay.

The Board noted that although the Department of Veterans Affairs (VA) may raise or lower a veteran's disability ratings

throughout his lifetime, ratings assigned by the military departments are fixed as of the date of a service member's separation or permanent retirement. The fact that the Department of Veterans substantially increased your disability ratings during the fifteen years following your discharge was not considered probative of the existence of error or injustice in your naval record, because the increases were based on changes in the rated conditions which occurred after you were discharged. In the absence of evidence which demonstrates that you should have received a rating of thirty percent or higher from the Department of the Navy in 1994, 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