



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE

Docket No. 08005-09

4 February 2010

[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.

[REDACTED]

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 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.

The Physical Evaluation Board (PEB) considered your case on 16 December 1968 and found you fit for duty. You disagreed, and demanded a hearing, at which you requested that you be found unfit for duty and assigned a rating of 10%. On 2 June 1999, a formal hearing panel of the PEB considered your case and assigned you a combined disability rating of 10% for conditions of your lumbar and cervical spine. The revised findings of the PEB were approved, and you were discharged with entitlement to disability severance pay on 15 November 1999. On 15 August 2000, the Department of Veterans Affairs (VA) awarded you a 40% rating for the condition of your lumbar spine and 20% for the condition of your cervical spine.

The Board noted that the disability ratings assigned by the PEB were based on the severity of your condition at the time the PEB considered your case. The 10% rating was based on the results of an examination which indicates that you had nearly full range of motion in your lumbar and cervical spine. The ratings assigned by the VA, although made effective the day following your discharge, were based on the results of an examination conducted approximately five months later, which indicate that significant limitation of motion in your lumbar and cervical spine was noted during the examination. It is important to note that while VA ratings are often based on changes in a veteran's condition which occur following discharge, those assigned by the military department are fixed as of the date of separation or permanent retirement.

As you have not demonstrated that your disabilities met the criteria for the assignment of a combined rating of 30% or higher as of 15 November 1999, 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 PFEFFER
Executive Director