



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

JRE
Docket No. 06233-10
18 April 2011

[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 7 April 2011. 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.

On 23 October 1984, the Physical Evaluation Board (PEB) found you unfit for duty due to arthritis of the left knee and an old bilateral slipped capital femoral epiphysis, with symptomatic left hip. Your disability was rated at 10% minus a 0% existed prior to entry factor for a final rating of 10%. The PEB also found that you suffered from low back pain and exogenous obesity, neither of which was unfitting or ratable. You were discharged by reason of physical disability on 8 February 1985, with entitlement to disability severance pay. Effective 9 February 1985, the Veterans Administration (VA) graded you separate disability ratings of 10% for myofascial back pain and residuals of a knee injury. The rating for the knee condition was

increased to 20% in 1986. The rating for the myofascial back pain was increased and decreased several times between 1985 and 1988, when ultimately increased to 80%, and you were declared unemployable.

The fact that the VA adjusted the rating for your myofascial back pain several times during the years following your discharge was not considered probative of the existence of error or injustice in your record. In this regard, the Board noted that although the VA may raise or lower disability ratings throughout a veteran's post-service life time, ratings assigned by the military departments are fixed as of the date of a the member's separation or permanent retirement. As you have not demonstrated that you were entitled to a disability rating of 30% or higher when you were released from active duty and discharged in 1985, the Board was unable to recommend favorable action on your request. 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 PFELFFER
Executive Director