



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No. 07938-10

11 April 2011

[REDACTED]

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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 31 March 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.

You enlisted in the Navy on 25 February 1986. On 19 April 2001, the Physical Evaluation Board (PEB) found you unfit for duty by reason of physical disability due to lumbar degenerative disk disease (DDD) which was rated at 20% disabling. You were honorably discharged with entitlement to severance pay on 13 August 2001 in accordance with the approved findings of the PEB. On 17 April 2002, the Department of Veterans Affairs (VA) awarded you a disability rating of 40% for lumbar DDD. That rating was based, in large part, on the results of an examination conducted during March 2002, which indicate that there was significant limitation of motion of your lumbar spine .

The Board noted that unlike VA ratings, which may be raised or lowered throughout a veteran's post-service lifetime, those assigned by the military departments are fixed as of the date of separation or

permanent retirement. As you have failed to demonstrate that you met the criteria for a rating in excess of 20% as of 13 August 2001, 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 PFEIFFER
Executive Director