



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

JRE
Docket No: 946-00
13 June 2000

Dear [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 18 May 2000. 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. In addition, the Board considered the comments of your counsel. Due to the extended length of time which has elapsed since your discharge, the Board was unable to locate a complete copy of your Disability Evaluation Proceedings.

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 enlisted in the Marine Corps on 13 November 1961. On 13 July 1963, the Physical Evaluation Board made preliminary findings that you were unfit for duty by reason of physical disability because of anxiety reaction, which it rated at 10% under VA code 9400. On 22 August 1963, the Secretary of the Navy directed that you be discharged with entitlement to disability severance pay. You were discharged on 10 September 1963 in accordance with the approved findings of the PEB. On 22 January 1970, you submitted a claim for disability compensation to the Veterans Administration (VA). On 9 June 1970, the VA awarded you a 10% rating, based on the results of an examination conducted on 7 May 1970, which indicated that your condition was mild to moderate. You reported that you were employed, and enjoyed your job, and that you socialized freely. Your main difficulty at that time was experiencing disturbing dreams, which made you "restless and unhappy". On 18 September 1972, based on a review of records from January and July 1972, the VA increased your rating to 30%. The increase was retroactive to 14 October 1970. Your

disability rating was ultimately increased to 100% effective 9 September 1980.

The Board carefully considered your contention that your condition should have been rated at 30% or higher by the Navy in 1963, but it was not persuaded that the condition was ratable in excess of 10% at the time of your discharge. The fact that the VA has rated your condition in excess of 10% disabling since 14 October 1970 was not considered probative of error or injustice in your record. In this regard, it noted that although VA disability ratings may be adjusted throughout a veteran's lifetime as the severity of the condition changes, ratings assigned by the military departments are fixed as of the date of separation or permanent retirement.

In view of the foregoing, 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