



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

JRE
Docket No: 5267-01
28 December 2001



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 13 December 2001. 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 Board found that on 19 July 1999, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of a herniated nucleus pulposus, L4/5, rated at 10% under Department of Veterans Affairs (VA) code 5293. You accepted the findings of the PEB on 22 July 1999, and were discharged with entitlement to disability severance pay on 31 August 1999. On 8 September 2000, the VA awarded you a 40% rating for your low back condition, and 10% for residuals of screw placement in the bones of your right hand. The ratings were based, in large part, on the results of examinations conducted during May 2000.

The Board was not persuaded that your lower back condition was ratable at or above 30% disabling on the date of your discharge. It noted that in order to warrant a rating in excess of 20%, a service member must suffer from severe intervertebral disc syndrome, with recurring attacks and intermittent relief. The available records do not demonstrate that your intervertebral disc condition was severe. In this regard, it noted that although you had substantial pain, and were clearly unfit for duty, the results of your neurologic examination

were only mildly abnormal, and an MRI study did not show any nerve root displacement. It is notable that straight leg tests conducted during May 2000 yielded negative results.

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