



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

JRE
Docket No: 6507-00
5 September 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 30 August 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 you were the subject of a medical evaluation board (MEB) on 25 February 1998. You were given a diagnosis of symptomatic pes planovalgus foot type, existed prior to enlistment (EPTE), not service aggravated, and referred to the Physical Evaluation Board. On 17 April 1998, the Record Review Panel of the Physical Evaluation Board determined that you were fit for duty notwithstanding the MEB diagnosis. The Physical Evaluation Board reconsidered and confirmed its findings on 11 June 1998. On 16 June 1998, the Director, Naval Council of Personnel Boards, denied your request for a formal hearing. You were released from active duty on 20 October 1999, by reason of completion of required active service. On 14 June 2000, the Department of Veterans Affairs (VA) awarded you 10% ratings for conditions of each of your feet, and 30% for obstructive sleep apnea. The latter rating was based on your history of sleep apnea, and subjective complaint of excessive daytime somnolence.

The Board noted that the VA must rate all conditions it classifies as "service connected", i.e., incurred in or aggravated by military service, without regard to the issue of fitness for

military service. The military departments, however, may assign disability ratings only in those cases where the service member has been found unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. As you have not demonstrated that the conditions of your feet or the sleep apnea rendered you unfit for service, there is no basis for granting 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