



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

**JRE**  
**Docket No: 799-02**  
**17 December 2002**

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 12 December 2002. 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 advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 22 October 2002, a copy of which is attached, and your response thereto.

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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In addition, it concurred with the rationale of the hearing panel of the Physical Evaluation Board which considered your case on 15 September 1998. A copy of that rationale is also attached. It was not persuaded that you were entitled to an increased disability rating under code 5295, or that you suffered from a ratable neurological condition. In addition, it noted that ratings assigned by the military departments, as well as the Department of Veterans Affairs, are based on the average impairment earning capacity associated with a rated condition, rather than on the actual or anticipated loss of a earning capacity of a specific service member or veteran.

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

Enclosure









