



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

JRE
Docket No: 8116-02
14 November 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 31 October 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.

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 released from active duty on 4 November 1994, and transferred to the Temporary Disability Retired List (TDRL) with a 30% rating for migraine headaches. You reported that your headaches had dramatically improved while on the TDRL, with a decrease in severity and frequency. You indicated that you did not require prophylactic medication, and that you were able to "work through" your headaches. You also stated that you wanted to return to active duty. On 26 July 1996, the Physical Evaluation Board (PEB) made preliminary findings that you remained unfit for duty, and that your headache condition was ratable at 10%. As you did not reply to the notification of the proposed findings, your acceptance was presumed. On 30 September 1996, the President, PEB, directed that action be taken to effect your discharge with entitlement to severance pay.

The fact that the Department of Veterans Affairs (VA) has awarded you a substantially higher rating for your headache condition than did the Department of the Navy was not considered probative of error or injustice in your naval record. In this regard, the Board noted that the Navy rating was based on the symptoms you disclosed when you underwent a periodic

physical examination on 21 May 1996. The Board was not persuaded that the frequency and severity of the headaches you reported at that time warranted a rating in excess of 10%. 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