



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

JRE
Docket No. 01596-03
14 August 2003



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 14 August 2003. 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. It also considered the comments of your counsel.

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 hospitalized on 25 April 1971 for back and left leg pain. On 13 May 1971, you were evaluated by a medical board, which noted that you complained of "low back and left leg pain". The medical board report indicates that you had injured your back in 1965, and undergone a laminectomy, which relieved the pain; however, you also reported that you had experienced intermittent episodes of back and left leg pain thereafter. The medical board determined that your condition existed prior to your enlistment, and was not aggravated by your service, and recommended that you be discharged without disability benefits. On 13 May 1971, you declined to submit a

statement in rebuttal to the medical board report, and requested that you be discharged as soon as possible without disability retirement or severance pay. You were discharged on 7 June 1971, in accordance with your request and the approved findings and recommendation of the medical board.

On 14 October 1971, the Veterans Administration (VA) denied your request for service connection for low back pain, noting that your symptoms, which were largely limited to your left leg and great toe, were minimal, and not indicative of service aggravation of a preexisting condition. The rating decision also indicates that you were employed by an electric and plumbing supply company, and that you had no back complaints due to your work and no lost time. You were noted to have a plodding gait, but that was attributed to your overweight condition. You apparently injured your back in 1984, which resulted in your being hospitalized for about thirteen days, and off work for four months. You were hospitalized again on 28 January 1986, because of back pain that began the day before after you had jumped from a truck. You were noted to have right lumbar pain with straight leg raising, as well as decreased sensation in the left leg. X-ray examination revealed narrowing of the L4-5 disk space, with osteophyte formation, and mild osteophytic changes at the L1 level as well. You were released from the hospital on 2 February 1986. On 23 June 1993, you complained of low back pain, and were noted to have pain on straight leg raising bilaterally at 30 degrees, with much more pain on the left. X-ray examination disclosed the existence of degenerative changes at the L4-5 level only. On 1 March 2002, the VA awarded you service connection and a 60% rating for degenerative disk disease at the L1-2 level, based on the determination that your condition in 2002 was "etiologically related" to the back condition you complained of while on active duty in 1971. That finding was based, in part, on the testimony of your wife that you had not injured your back since she had met you in 1978, and your statement that you had had pain radiating to your right leg since 1971, after falling down.

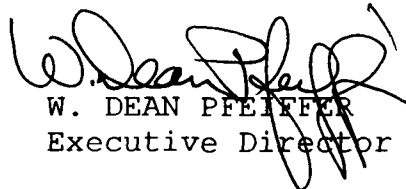
The Board was not persuaded that the condition the VA rated in 2002 was in any way related to the back condition you complained of in 1971. Although there are brief references to right leg pain in your service records, the focus of your complaints at that time, and for years thereafter, was your left leg. It also noted that your wife's testimony concerning your medical history is belied by evidence in your VA file, which indicates you injured your back on several occasions after your discharge, and that you were hospitalized twice because of back injuries. In

that you were hospitalized twice because of back injuries. In addition, the Board noted that even if the back pain you experienced in 1971 had been incurred while you were entitled to basic pay, you would not have been eligible for disability retirement, which requires a minimum rating of 30%. Your condition was mild in 1971, and certainly not productive of impairment in excess of 10%.

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