



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 6634-97

26 August 1999

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 19 August 1999. 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 5 May 1993, the Record Review Panel of the Physical Evaluation Board made preliminary findings that you were unfit for duty because of a lower back condition rated at 20% disabling. You accepted those findings on 27 July 1993, and were discharged with entitlement to disability severance pay on 3 September 1993. On 20 March 1995, the Department of Veterans Affairs (VA) awarded you a 40% rating for your back condition, effective from 4 September 1993.

The Board was not persuaded that your back condition was ratable at 30% or higher as of the date of your separation from the Navy. It noted that the VA rating assigned on 20 March 1995, although made retroactive to the day following your discharge, was based on the results of an examination conducted on 6 October 1994, and does not reflect your condition more than one year earlier. In addition, it noted that the VA and Department of the Navy are separate agencies, and neither is bound by the rating decisions of the other. 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