



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

JRE
Docket No: 3049-98
7 May 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 15 April 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 you served on active duty in the Marine Corps from 11 December 1985 to 1 July 1993, when you were discharged by reason of physical disability because of a pulmonary condition rated at 10%. You submitted a claim for disability compensation to the Department of Veterans Affairs (VA) on 30 August 1993, and were awarded 10% ratings for obstructive pulmonary disease, degenerative joint disease of the low back, and a hiatal hernia, and 0% for a mid systolic click with evidence of mitral valve prolapse. You underwent back surgery on during October 1996, and after a period of convalescence, you received a 40% rating for your low back condition from 1 January 1997.

The Board noted that unlike the military departments, the VA awards disability ratings without regard to the issue of fitness for military service. In addition, it noted that ratings assigned by the military departments are fixed as of the date of separation or permanent retirement, whereas the VA may raise or lower a veteran's ratings through out his lifetime as his condition changes. As you have not demonstrated that you were unfit for duty because of a lower back condition or a hiatal hernia at the time of your discharge, the Board was unable

to recommend any corrective action in your case. 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