



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

JRE
Docket No: 4455-01
6 March 2002

[REDACTED]

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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 February 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 was not persuaded that you should have been retired by reason of physical disability, vice discharged with entitlement to disability severance pay. It found that on 1 February 2000, the Physical Evaluation Board made preliminary findings that you were unfit for duty because of right L4 radiculopathy secondary to foraminal stenosis at the L4/5 level. You accepted those findings contingent upon your being retained on active duty until 17 September 2000. Your condition was accepted, and you were discharged with entitlement to disability severance pay on 17 September 2000. You were given a provisional diagnosis obstructive sleep apnea on 17 October 2000, and the diagnosis was confirmed on 25 October 2000, and you it appears that you were prescribed a CPAP during December 2000. Those findings were not considered probative of the existence of error or injustice in your record, because obstructive sleep apnea, even when requiring the use of a CPAP device, is not unfitting per se. In addition, there is no indication in available records that you suffered from excessive daytime somnolence or other any effect of the obstructive sleep apnea which resulted in significant industrial impairment or rendered you unfit to perform the duties of your rate. The Board found it notable that you received a 4.0 evaluation report for the 1

March-17 September 2000 period, and that your performance of duty was described in very positive terms, and you were recommended for early promotion.

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