



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

JRE
Docket No: 6185-01
23 October 2001

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 12 October 2001. 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 underwent a pre-retirement physical examination on 4 August and 4 October 1981. You were found physically qualified for transfer to the Fleet Reserve notwithstanding your low back pain, which was classified by the examining physician as "90% resolved" at that time. You were released from active duty on 30 November 1981, and transferred to the Fleet Reserve the following day.

The Board noted that in order to qualify for disability retirement, a service member must be unfit to perform the duties of his office, grade, rank or rating by reason of physical disability on the date of his separation or retirement. Although your back condition has become much more severe over the past nineteen years, the available evidence does not demonstrate that you were unfit for duty on 30 November 1981. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You should consider applying to the Department of Veterans Affairs (VA) for service connection and disability compensation for your back condition. The VA awards disability

compensation without regard to the issue of fitness for military duty, and its ratings are based on the veteran's condition at the time the ratings are assigned, rather than the veteran's condition prior to his release from active duty.

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