



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

JRE
Docket No: 8089-00
20 July 2001

[REDACTED]

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 July 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 on 25 January 1999, the Physical Evaluation Board made preliminary findings that you were unfit for duty because of myofascial pain syndrome of the lumbosacral spine, with related low back pain, rated at 10% under Department of Veterans Affairs (VA) code 5295. A herniated nucleus pulposus L5-S1 with S1 radiculopathy was classified as a category II condition, as a condition which contributed to the unfitting condition, but was not separately ratable. Varicosities of the left lower leg, with saphenous mononeuropathy and arthralgia, and a ganglion cyst, right wrist, were classified as category III conditions, which were not separately unfitting and did not contribute to the unfitting conditions. You accepted those findings on 1 February 1999, and were discharged with entitlement to disability severance pay on 8 March 1999. Effective 9 March 1999, the VA awarded you a 20% rating for your lower back condition, 10% for your varicose veins, and 10% for a condition of your cervical spine. The Social Security Administration determined that you were disabled under that agency's rules beginning on 8 March 1999. The basis for the latter determination is not apparent in the available records.

The fact that the VA awarded you a combined rating of 40% was not considered probative of the existence of error or injustice in your record. In this regard, it noted that the VA must rate any condition it classifies as "service connected", without regard to the issue of fitness for military service. As you have not demonstrated that you suffered from any condition, other than that of your lower back, which rendered you unfit to perform the duties of your office, grade, rank or rating, there is no basis for assigning any additional disability ratings. The Board noted that the determinations made in your case by the Social Security Administration are separate and distinct from those made by the Department of the Navy Disability Evaluation System, and they are not binding on the Department of the Navy.

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