



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

JRE
Docket No: 3612-02
14 November 2002



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 18 October 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. In addition, it considered the comments of your counsel.

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 were evaluated by a medical board on 6 February 2001, and given diagnoses of obstructive sleep apnea, hypertension, diabetes mellitus, gastroesophageal reflux disease, paradoxical vocal cord movement, dyslipidemia, and obesity. On 20 April 2001, the Physical Evaluation Board (PEB) found you fit for duty. The PEB noted that your performance of duty was not significantly impaired by the sleep apnea or the other conditions diagnosed by the medical board. You were discharged from the Navy on 30 November 2001. Effective 1 December 2001, the Department of Veterans Affairs awarded you 0% ratings for 6 conditions, 10% ratings for 8 others, a 20% rating for a lumbar spinal condition, and a 50% rating for sleep apnea. The rating for the sleep apnea was based on your use of a continuous airway pressure breathing device and a humidifier, rather than the residual effects of the apnea.

The Board noted that the military departments may assign disability ratings only in those cases where the service member is unfit to perform the duties of his office, grade, rank or

rating by reason of physical disability. The VA, however, rates all conditions it classifies as "service connected", without regard to the issue of fitness for military service. The ratings you were assigned by the VA appear to indicate that the rated conditions were productive of no more than minimal impairment. As you have not demonstrated that you were unfit for duty at the time of your discharge from the Navy, the Board was unable to recommend any corrective action in your case. indicated above, the rating for sleep apnea was based on your use of breathing devices, rather than the impairment caused by that condition. 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