



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

JRE
Docket No: 5663-01
24 May 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 16 May 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 did not accept your contention to the effect that the Physical Evaluation Board (PEB) considered only your back condition, and ignored other conditions, which were subsequently rated by the Department of Veterans Affairs (VA). It noted that PEB considered all diagnoses referred to it by your medical board, to include status/post (S/P) pseudarthrosis of the fusion mass of L3 to the sacrum lateral mass fusion; S/P posterior later mass fusion L# to the sacrum; S/P acromioclavicular separation repair; S/P abdominal surgery for shrapnel wounds; and psychophysiological reaction with some depressive features. Although the Board was unable to obtain a complete copy of your disability evaluation proceedings, due to your delay in filing your request for corrective action, available records indicate that on 19 September 1974, the first, second and fifth diagnoses were rated together under VA code 5293 at 40%, and that the third and fourth were rated at 0% under codes 5203 and 7399-7301, respectively, and you were transferred to the Temporary Disability Retired List. The 40% rating was confirmed by the PEB on 22 November 1977, and you were permanently retired with that rating. The Board was not persuaded that any additional conditions should have been rated by the PEB, or that the

combined rating you received was erroneous or unjust. 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