



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

JRE
Docket No. 6512-09
24 May 2010



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 20 May 2010. 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.

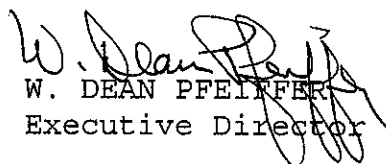
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board concluded that your receipt of a disability rating of 30% from the Department of Veterans Affairs (VA) effective the day following your discharge from the Navy with entitlement to disability severance pay is not probative of the existence of error or injustice in your naval record. In this regard, the Board found that the VA rating was based in large part on the increased limitation of motion of your cervical spine that occurred during the twelve months after you were discharged. In addition, VA rating officials granted you the 30% rating despite acknowledging that your condition did not meet the schedular criteria for a rating in excess of 20%.

As you have not demonstrated that the Physical Evaluation Board erred in not assigning you a disability rating of 30% or higher, the Board was unable to recommend any corrective action in your case. 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