



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

JRE  
Docket No: 829-01  
14 November 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 25 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. In this connection, the Board substantially concurred with the rationale of the hearing panel of the Physical Evaluation Board which considered your case on 1 February 2000, a copy of which is attached. 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

Enclosure



[REDACTED]

The member entered the hearing room walking with a very pronounced limp, favoring his right leg. However, the member was noted outside the formal board spaces walking entirely normally. The member explanation of this was that sometimes he limps and sometimes he doesn't, depending on how sore his knee is. He claimed his knee was sore walking into the formal board's hearing room because he had just gotten up out of a chair.

The member testified that his counsel had explained to him that, without the internal instability in his knee, he understood that he could not be rated at even 20% disability. However, he stated that he somehow felt that his disability "deserved" more than 10%.


The member also testified he understood that this was a *de novo* hearing and that the threshold issue was fitness for duty. The member submitted an addendum dated 3 January 2000 which notes that the member had mild patellofemoral crepitus and a positive patellar compression test. However, there was no evidence of effusion in spite of the member's claims of chronic swelling. Further, the member's range of motion was from 2 degrees of hyperextension to 135 degrees of flexion and no evidence of internal instability in the knee. The patella was "easily dislocatable with lateral stress." However, there is no indication that the member's patella would dislocate simply performing his routine duties. Finally, the addendum was noted to be dictated because the member was rebutting the board findings. There is no objective data explaining why the member cannot walk or climb stairs.

The member testified that his patella sometimes dislocates climbing stairs or getting out of a car, but he notes that it immediately reduces on its own or that he can reduce it manually with no difficulty. The member claimed that a problem arises because, when it dislocates, he falls. However, the member also testified that he can prevent it dislocating by walking with a limp, favoring his right leg.

The member's performance evaluations are contained in Exhibit C and note that the member was rated at or above standards in all categories and "Must Promote" on his last performance evaluation covering the period June 1998 to June 1999. The member testified that this was on shore duty and working around the barracks, not working as a boatswain's mate. However, it must be noted again that the member was performing his routine assigned duties without difficulty. There is still no objective evidence to show why the member could not perform his routine duties as a boatswain's mate. While the member has dramatic complaints of difficulty with his knee, these complaints are subjective. It is clear that the member has a hyper-mobile patella, but it is not clear that this actually interferes with his ability to carry out the duties of his rank and rate.

In sum, the member has a hyper-mobile patella and can dislocate his right patella very easily. The member has subjective complaints of what this

Enclosure (1)



hyper-mobility means, but there are no objective data to show that the member cannot actually carry out his duties. Finally, while the member had a very significant limp coming into the hearing room, he had no limp when he was observed walking outside the formal board spaces. The member testified that, if he is found fit, he intends to stay in the Navy. Therefore, after careful consideration of all relevant medical evidence, the formal board finds the member fit for continued naval service.

Enclosure (1)