



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

JRE
Docket No: 2043-01
23 October 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 12 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 9 August 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

RATIONALE:

THE MEMBER IS A 30 YEAR OLD MSSN, USN(RET) WITH ABOUT 5 AND ½ YEARS OF SERVICE AT THE TIME SHE WAS PLACED ON THE TDRL ON 24 FEBRUARY 1995 WITH DISABILITY RATINGS OF 10% UNDER V.A. CODE 5213, 10% UNDER V.A. CODE 5294, 10% UNDER CODE 8520, AND 10% UNDER CODE 6519 FOR A TOTAL RATING OF 34% ROUNDED TO 30% FOR THE DIAGNOSES:

- (2) STATUS POST LEFT RADIUS FRACTURE WITH SYNOSTOSIS;
- (3) STATUS POST PELVIC FRACTURES WITH SHORTENED RIGHT LOWER LIMB;
- (4) PROBABLE RIGHT SCIATIC NEUROPATHY; AND
- (5) HOARSENESS.

AN ADDITIONAL DIAGNOSIS THAT WAS A CATEGORY II CONDITION CONTRIBUTING TO DIAGNOSES 3 AND 4 WAS:

- (6) LOW BACK PAIN.

ADDITIONAL DIAGNOSES THAT WERE CONSIDERED CATEBORY III CONDITIONS WERE:

- (1) STATUS POST CLOSED HEAD INJURY; AND
- (7) MILD DEPRESSION.

THE MEMBER UNDERWENT TDRL EVALUATIONS ON 6 AND 9 MAY 1997 AT JACKSONVILLE NAVAL HOSPITAL. ON 20 OCTOBER 1999 JACKSONVILLE NAVAL HOSPITAL SUBMITTED A CIVILIAN RHEUMATOLOGY EVALUATION DATED 20 JULY 1999 IN LIEU OF A TDRL EVALUATION. THE INFORMAL PEB CONSIDERED THE CASE ON 20 DECEMBER 1999 AND FOUND THE MEMBER UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY BASED ON DIAGNOSES 4, 3, 2, AND 5 ABOVE AND RATABLE AT 10% UNDER V.A. CODE 8520, 10% UNDER CODE 5294, 0% UNDER CODE 5213, AND 0% UNDER V.A. CODE 6519 FOR A TOTAL RATING OF 20%. DIAGNOSIS NUMBER 6 REMAINED A CATEGORY II CONDITION AND DIAGNOSES 1 AND 7 REMAINED CATEGORY III CONDITIONS. THE MEMBER DISAGREED WITH THIS FINDING AND DEMANDED A FORMAL HEARING.

THE MEMBER APPEARED AT THE HEARING REQUESTING TO BE FOUND UNFIT FOR DUTY WITH DISABILITY RATINGS OF 20% UNDER V.A. CODE 5294, 20% UNDER CODE 5213, AND 10% UNDER CODE 6519-6516 FOR A TOTAL RATING OF 42% ROUNDED TO 40%. TO SUPPORT HER REQUEST THE MEMBER PRESENTED TESTIMONY, COPIES OF HER CIVILIAN AND JACKSONVILLE NAVAL HOSPITAL TREATMENT RECORDS, AND NON-MEDICAL EVIDENCE LETTERS FROM HER PARENTS AND AN AUNT. THE MEMBER ALSO MADE HER MRI'S AVAILABLE FOR REVIEW.

AFTER CAREFUL REVIEW OF ALL THE AVAILABLE EVIDENCE AND BASED ON UNANIMOUS OPINION, THE FORMAL PEB FINDS THE MEMBER REMAINS UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY BASED ON DIAGNOSES 2, 3, AND 4 ABOVE. THE RECORD DOCUMENTS THAT THE MEMBER SUSTAINED MULTIPLE INJURIES IN A MOTOR VEHICLE ACCIDENT IN FEBRUARY 1993 THAT INCLUDED A CLOSED HEAD INJURY, PELVIC FRACTURES THAT RESULTED IN SHORTENING OF THE RIGHT LOWER EXTREMITY, A LEFT RADIAL FRACTURE, HOARSENESS PROBABLY DUE TO A RECURRENT LARYNGEAL NERVE TRAUMA, AND A RIGHT SCIATIC NEUROPATHY. THE RECORD DOCUMENTS THAT THE MEMBER CONTINUES TO HAVE CHRONIC LOWER BACK PAIN, PAIN IN BOTH HIPS, AND RESIDUAL LEG LENGTH DISCREPANCY REQUIRING A ¾ INCH LIFT IN THE RIGHT SHOE. ALTHOUGH NOT DOCUMENTED IN THE RECENT EVALUATION, THE MEMBER CONTINUES TO HAVE LIMITATION IN PRONATION AND SUPINATION IN THE LEFT FOREARM DUE TO SYNOSTOSIS RELATED TO THE RADIAL FRACTURE. THESE LIMIT THE MEMBER'S ACTIVITIES AND WOULD INTERFERE WITH THE ADEQUATE PERFORMANCE OF REQUIRED MILITARY DUTIES. ALTHOUGH THE PREVIOUS TDRL EVALUATIONS INDICATED RESOLUTION OF THE SCIATIC NEUROPATHY, THE MEMBER TESTIFIED SHE CONTINUES TO HAVE EPISODES OF SHOOTING PAIN IN HER LEG THAT IS EXCRUCIATING AND TRANSIENTLY INCAPACITATING SUCH THAT IT WOULD INTERFERE WITH THE PERFORMANCE OF DUTIES.

ALTHOUGH THE RHEUMATOLOGY EVALUATION AND PREVIOUS TDRL EVALUATION FAILED TO DOCUMENT THE LIMITATION IN PRONATION AND SUPINATION, EXAM AT THE HEARING SHOWED PRONATION WAS LIMITED TO ABOUT 50 DEGREES AND SUPINATION TO ABOUT 30 DEGREES. THIS IS CONSIDERED TO WARRANT THE 20% RATING UNDER V.A. CODE 5213.

THE PERSISTENT LOWER BACK AND PELVIC PAIN WITH A ¾ INCH LEG LENGTH DISCREPANCY WARRANTS A 10% RATING UNDER V.A. CODE 5294.

THE TDRL AND RHEUMATOLOGY EXAMS INDICATE NO MOTOR OR SENSORY OR TENDON REFLEX DEFICITS IN THE LOWER EXTREMITIES. THEREFORE, THE RESIDUAL INTERMITTENT RADICULAR PAIN IS RATED AT 0% UNDER V.A. CODE 8520.

DIAGNOSIS NUMBER 6 REMAINS A CATEGORY II CONDITION CONTRIBUTING TO DIAGNOSIS NUMBER 3.

THE ABOVE RATINGS COMBINE TO 28%, WHICH ROUNDS TO 30%.

THE FORMAL PEB DID NOT FIND THE MEMBER'S RESIDUAL HOARSENESS TO BE OF SUCH A SEVERITY THAT IT WOULD PRECLUDE THE PERFORMANCE OF DUTIES. THEREFORE IT IS CONSIDERED A CATEGORY III CONDITION.

DIAGNOSES 1 AND 7 REMAIN CATEGORY III CONDITIONS AS PREVIOUSLY CATEGORIZED.

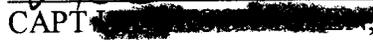
THE MEMBER'S FIVE YEARS OF TDRL ELIGIBILITY HAS EXPIRED. THEREFORE, THE DISABILITY IS CONSIDERED PERMANENT.


CAPT , USNR, PRESIDING

28 Sep '00
DATE


COL , USMC, PANEL

28 Sept '00
DATE


CAPT , MC, USN, PANEL

28 Sept '00
DATE