



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

JRE
Docket No: 3233-01
28 December 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 13 December 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 13 December 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

SAN DIEGO FORMAL HEARING RATIONALE
IN THE CASE OF


The final TDRL periodic evaluation was held at Naval Hospital, Bremerton, Washington on 07 August 2000, with the following diagnoses:

1. Mixed spasmotic dysphonia of unclear etiology (478.79)
2. Stuttering (307.0)
3. History of excised squamous cell carcinoma of the lower lip (V10.02)

The Informal Physical Evaluation Board found the member unfit for duty on 29 August 2000 under VA Code 8099-6516, rated his condition at 10% disability and separation from the naval service with severance pay.

The member's hearing was held telephonically on 12 December 2000. The member requested to be found unfit for duty and rated 30% disability for neurogenic voice disorder under VA Code 8099-6516 and rated 50% disability for post-traumatic stress disorder under VA Code 9411 for a total disability rating of 60% disability and placement on PDRL.

Accepted documentary evidence consisted of:

Exhibit A - PEB Case File

Exhibit B - Veterans Administration Medical File

Exhibit C - Social Security Administration Notice of Decision

Exhibit D - Health and Human Services letter of 31 May 1995

Exhibit E - Undated letter from Deborah Netherly

Exhibit F - Undated letter from Holly Netherly

Exhibit G - Undated letter from John Barkley

Exhibit H - NCPB/PEB Policy letter 2-2000

Medical Board of 09 August 1995 reports a diagnosis of neurogenic voice disorder. In the body of the medical board the neurogenic voice disorder is further defined as a spasmotic dysphonia and presumptive basal ganglia dysfunction. There's a description of the member's voice in the medical board which states that "the patient is able to whisper". The member underwent a very extensive neurologic and psychiatric evaluation and "speech disorder was judged to be neurogenic in origin". The board goes on to state "there is absolutely no evidence of psychiatric dysfunction in this patient". Finally, a clinic note of 12 October 1995 written after the medical board indicates the member's voice disorder was manifested by "an effort for whisper".

The member appeared via telephone before the Formal Board and spoke in a clear voice without any evidence of whispering. The member did have a marked intermittent stuttering. However, stuttering is not a reflection of basal ganglia dysfunction and is not attributable to the spasmotic dysphonia for which the member was originally rated. The TDRL exam of 07

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August 2000 notes the member complained of "difficulty vocalizing specific words at times". The evaluating physician noted that the member's speech "includes stuttering and some hesitancy". There was no indication of the member's speaking in a whisper. This is consistent with his speech at the time of the Formal Board when the member spoke in a clear voice. In fact, the evaluating physician made two separate diagnosis: spasmodic dysphonia and stuttering. This is important because the evaluating neurologist separated the two diagnoses which makes clear that the stuttering is not a part of the spasmodic dysphonia.

In the member's testimony, there was nothing to indicate that member's spasmodic dysphonia was currently an unfitting condition. The member had multiple complaints in his testimony and his wife's testimony, but none of these was because the member could not speak above a whisper. In fact, there was no specific complaint that the member's stuttering was actually unfitting.

The member's wife testified to the member's forgetfulness, difficulty concentrating, impaired short-term memory, and impaired abstract thinking. This is actually consistent with exhibit C which contains the Social Security Administration evaluation that indicated that the member had some nonspecific mental disorder which was not specifically related to the member's dysphonia for which the member was originally rated.

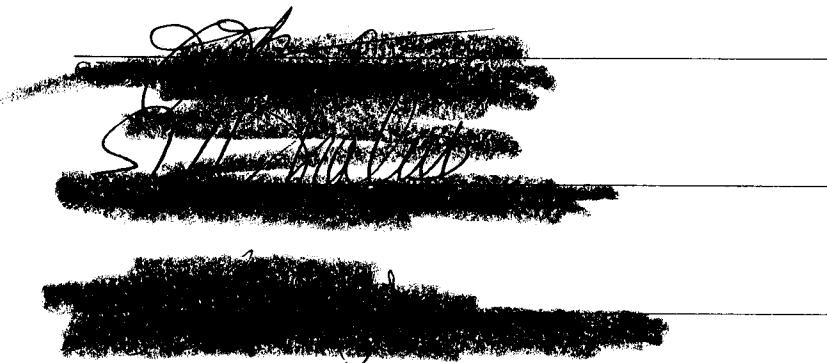
The member did however request to be rated for PTSD. This was critically important because the data are unequivocal in the medical board of 09 August 1995 that the member showed "absolutely no evidence of psychiatric dysfunction" at the time of the medical board. This was part of an extensive evaluation done because the origin of the member's dysphonia was obscure. Article 3618 of SECNAVINST 1850.4D makes clear that the member cannot be rated for his PTSD unless it was an unfitting disability "at the time when the member was placed on the TDRL". This assumes of course that the member actually had PTSD while entitled to basic pay. The member and his wife both state that the member was diagnosed with PTSD in 1971 and again in 1991 after his service in Vietnam and service in the Gulf respectively. This is not supported by the documentary record. However, it must be noted that even stipulating arguendo that the member had been diagnosed in 1971 or 1991 with PTSD, that is not the issue. The only issue is whether the member was suffering from a separately unfitting condition due to PTSD at the time member was placed on TDRL. The medical board makes unequivocally clear that this was not the case. Therefore, it is beyond the purview of the Formal Board to evaluate the member's putative diagnosis of PTSD.

In sum, the member was placed on the TDRL for dysphonia as manifested by speaking in "an effort for whisper". Currently, the member is not speaking in an effort for whisper but does have some stuttering which is a separate diagnosis. There was no evidence that the member was stuttering at the time when he was placed on the TDRL so this would not be a ratable condition in any case in accordance with Article 36-18. The member's complaints all dealt with his forgetfulness, difficulty

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concentrating, and short-term memory loss along with his irritability, but none of these is attributable to his dysphonia. A careful reading of member's current symptoms would indicate that the member is probably not currently unfit for his original diagnosis. However, after careful consideration of all relevant medical evidence viewed in the light most favorable to the member, the Formal Board finds that the member is in fact unfit for continued naval service and should be separated and rated under VASRD Code 8099-6516 for his neurogenic voice disorder for a total 10% disability.

REVIEWED AND AUTHENTICATED:

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