



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

JRE
Docket No: 4234-00
3 July 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 21 June 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 enclosed rationale of the hearing panel of the Physical Evaluation Board which rated your disabilities at a combined rating of 40% for bilateral knee conditions. It was not persuaded that you suffered from an unfitting back condition at the time of your transfer to the Temporary Disability Retired List, or that the final rating assigned by the Physical Evaluation Board for your left knee condition is incorrect. 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

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RATIONALE

[REDACTED] is a 37 year old male with over 14 years of military service who was placed on the TDRL in September 1986 with the diagnosis of (1) Degenerative Joint Disease of the Left Knee, ratable under VA Code 5003 at 20%, and (2) Degenerative Joint Disease of the Left Wrist, ratable under VA Code 5003 at 10% for a combined rating of 28% which is 30%. The member's most recent evaluation was in April 1991 and based on this the Record Review Panel found the member permanently unfit with the same ratings. The member has appealed and has requested a 30% rating for his wrist under VA Code 5214, and a 30% rating for his left knee under VA Code 5257.

The member is right handed. The medical record notes and testimony confirms several injuries to his left wrist which resulted in multiple operations. It was finally decided, once he was placed on the TDRL, that the left wrist should be fused but it required 3 operations until successful fusion was completed. The last fusion took place in 1989. On examination at the hearing the member's wrist is fused in essentially neutral position at 0 degrees; he has no dorsiflexion, no plantar flexion. He does have good pronation and supination of the forearm bilaterally. The Panel considers that this wrist is ratable under VA Code 5214 at a 30% level. It is the "minor" wrist. It does not fit the "favorable" position defined by the VASRD or by the DEM (in its special instruction and explanatory notes on the VASRD) nor is it in an "unfavorable" position as defined by the VASRD.

The left knee has also sustained multiple injuries as noted in his record. The member has had multiple arthroscopic examinations and operations on his menisci, both medially and laterally, and has been diagnosed as having degenerative joint disease. The member testifies that he has difficulties with the knee, that it goes out at times, and at other times it locks up and he requires assistance to move. He is limited in how far he can go and he does not climb on machinery at his work. He has a variety of knee braces one of which he wears all the time. He testifies, and Board exhibits indicate, that the member has been selected for a total knee replacement in spite of the fact that he is young. The member testified that he would opt for a knee replacement rather than a fusion at this time although he is aware that he would probably have one further replacement of the knee, and may require a fusion in the future. On examination at the hearing the member has a range of motion of 0 degrees to greater than 90 degrees. This is full extension which was not recorded by the TDRL. On examination we could not detect instability in the form of Lachman's or anterior drawer or on varus or valgus stress. The Panel considers that the member is not ratable under VA Code 5257 which is instability nor under either VA Code 5261 or 5260 which are limitation of motion.

ENCLOSURE: (1)

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Therefore the Panel would continue to rate the left knee under VA Code 5003.

The Panel finds that the member is permanently unfit for military service because of (1) Degenerative Joint Disease of the Left Knee, ratable under VA Code 5003 at 20%, and (2) Degenerative Joint Disease of the Left Wrist, ratable under VA Code 5214 at 30%, for a combined rating of 44% which is 40%.