

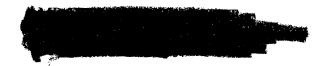
## **DEPARTMENT OF THE NAVY**

BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4518-00 18 September 2001





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 September 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. In addition, the Board considered the advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 26 April 2001, a copy of which is attached, and the comments of your counsel in response thereto.

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 comments contained in the advisory opinion. You were assigned a rating which reflected the degree of impairment caused by your condition as of the date of your discharge. As that rating was below 30%, there was no available alternative to discharging you with entitlement to disability severance pay, as required. 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



## **DEPARTMENT OF THE NAVY**

NAVAL COUNCIL OF PERSONNEL BOARDS WASHINGTON NAVY YARD 720 KENNON STREET SE RM 309 WASHINGTON, DC 20374-5023

IN REPLY REFER TO

Ser: 01-16 26 Apr 01

From: Director, Naval Council of Personnel Boards

To: Executive Director, Board of Correction for Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE OF

FORMER

Ref: (a) Your ltr JRE:jdh Docket No: 4518-00 OF 11 Jan 01

(b) SECNAVINST 1850.4D

Encl: (1) President, PEB ltr 1850 10R:111 PEB Index No. N1945 of 25 Aug 95

- 1. This letter responds to reference (a) which requested comments and a recommendation regarding Petitioner's request for correction of his records. On 4 June 1993, the Petitioner was discharged and placed on the TDRL. On 21 September 1995, the member was removed from the TDRL and separated with severance pay. The Petitioner is seeking to have his record corrected to reflect a higher disability rating for the condition that rendered him unfit for further naval service and to be returned to the disabled retired list.
- 2. The Petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments are provided:
- a. On 14 July 1992, the member was diagnosed with Guillain-Barre Syndrome. This condition rendered him unfit and he was discharged and placed on the TDRL with a disability rating of 40% on 5 June 1993. On 21 September 1995, he was removed from the TDRL and separated with severance pay. The Department of Veterans Affairs (DVA) carried him at 60% from 5 June 1993, 40% from 1 May 1996, 80% from 22 July 1997 and 90% from 3 February 1998. The DVA ratings covered the time span when the Petitioner was found to be not qualified for any TDRL/PDRL disability payments by the Physical Evaluation Board (PEB).
- b. On 20 July 1995, the PEB's Record Review Panel (RRP) determined the Petitioner's neurological condition was ratable at 0% under the VA Disability Rating Code 8011-8520R (enclosure (1)). This determination was consistent with the 9 March 1995 DVA Fargo, North Dakota neurology report indicating, in part, "He no longer wears ankle braces while exercising and is now able to engage in football and jogging activities. The only residual symptom he experiences is some mild tingling in his left arm and problems focusing his left eye when quickly changing visual fixation." The report concluded that Petitioner's diagnosis was "acute Guillain-Barre Syndrome with almost complete neurological recovery."
- c. The Petitioner waived a hearing panel (Formal Board) appeal and accepted the above findings of the RRP.

## Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE OF FORMER

- d. The above noted symptomatic and functional improvement is not reflected in the DVA Rating Decisions submitted with the BCNR application because, apparently, no DVA Rating Decision occurred during the extended period of improving/improved functioning during which the above PEB TDRL evaluation sequence occurred.
- e. Sadly, by the end of a nearly two year period after being removed from the TDRL with severance pay and three years after his Guillain-Barre Syndrome appeared to be in remission, the Petitioner's condition deteriorated, although he was able to maintain employment on a full-time basis.
- f. Incidentally, about half of the conditions listed in the roughly concurrent 40% DVA disability rating appear to be conditions that the PEB would have determined to not be separately unfitting, (e.g., low back condition).
- g. There appears to be insufficient evidence to warrant granting the BCNR request.
- 3. In summary, the evidence in the record supports the severance pay the Petitioner received and his removal from the TDRL. Accordingly, no modification to the Petitioner's record is recommended.
- 4. If there are any questions, my point of contact for this case is Lieutenant. JAGC, U.S. Naval Reserve. He is available at (202)685-6399.

