



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

JRE
Docket No: 4548-00
21 September 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 30 August 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 11 May 1999, a copy of which is attached; however, it accepts the determination of the Director, Naval Council of Personnel Boards that your back condition was unfitting and ratable at 10%. It was not persuaded that you should have been retired by reason of physical disability, vice discharged with entitlement to disability severance pay. 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 PEB RATIONALE
IN THE CASE OF
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A medical board was held at Naval Hospital, Pensacola, Florida on 25 August 1998 with diagnoses of:

1. Chronic Low Back Pain with Right Sciatica Etiology Unknown (7242)
2. Chronic Daily Headache Combination of Analgesic Rebound Headache and Migraine (30781)

The informal Physical Evaluation Board found the member fit for duty on 04 December 1999.

This member appeared before the formal PEB on 11 May 1999 requesting to be found unfit for duty under VA Codes 9433/9434 (dysthymic disorder/depression) at 10%, 8100 (migraines) at 10%, and 5295 (low back pain) at 10% for a total of 30% disability and placed on the TDRL. In the alternative, the member requested EPTS (dysthymic disorder).

Accepted documentary evidence consisted of:

- Exhibit A - PEB Case File
- Exhibit B - Additional Medical Information
- Exhibit C - Performance Evaluations
- Exhibit D - PRT Folder
- Exhibit E - Ltr from GYSGT McCoy dated 06 May 99

The member's medical board was dictated 25 August 1998 and reports diagnoses of chronic low back pain of unknown etiology and chronic daily headaches. In addition, the member has multiple addenda which modify and clarify the diagnoses and also add a new diagnosis of major depression. The member arrived at the formal board with a cane and riding in a wheelchair, though there is no substantiation in the medical board of any necessity for the wheelchair or the cane.

The member requested ratings for her low back pain, headaches, and for the additional diagnosis of "major depression" or alternatively for a putative diagnosis of dysthymic disorder EPTS. These various complaints will be addressed seriatum.

The first issue is the member's chronic daily headaches which she testified have been going on since she had her child in 1993. An addendum on the headaches was written 2 October 1998 which noted that the patient has a constant right retro-orbital pain that waxes and wanes in severity, but is "generally not incapacitating." The addendum also notes that the member has no history of a visual aura prior to or during the headaches. Based on this, the evaluating neurologist felt that the patient's complaint was consistent with a combination of analgesic rebound headache and migraine headache without aura. However, the neurologist did not make a specific diagnosis of migraine headaches.

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Even stipulating arguendo that the member has a diagnosis of migraine headaches, that in itself is not synonymous with disability. As noted by the evaluating physician, the member's headaches are "generally not incapacitating and she is able to continue working through the pain." The member testified the last time she saw a physician for her headaches was in March 1998. She has never taken anything stronger than Tylenol, which she takes daily. Moreover, the member has continued to perform her duties adequately as reflected by her outstanding performance evaluations. In addition to that, the member was just promoted to first class petty officer in December 1998 in spite of her complaints. Thus, there is no evidence that the headaches can be considered in any way a separately unfitting condition.

The next issue is the member's low back pain. The medical board work-up has been extensive and normal. The member has undergone two MRI's, CAT scan, X-rays, and EMG's, all of which have been normal. The member has been evaluated by neurology, rheumatology and orthopedics, without finding any etiology for her complaint. The member also testified that she saw a civilian orthopod in Atlanta. No one has found any reason for the member's complaints. The member has had a CBC, bone panel, HLAB-27, ANA, and rheumatoid factor, all of which have been within normal limits or negative as appropriate. The member has had two epidural injections without any relief of her pain. The physical examination has noted strength that is 5/5 in all muscle groups without evidence of atrophy or muscle wasting. The reflexes have been normal without evidence of spasm and with a normal range of motion. Additional medical evidence in the form of a Standard Form 600 entry of 15 December 1998 notes that the member went to see her physician after receiving her fit for duty finding. The reported diagnosis is low back pain with pain out of proportion to physical findings, but the physical findings are all normal.

The member arrived at the formal board in a wheelchair claiming that she cannot walk for extended periods without pain, but there is no evidence in the record that the member has been prescribed a wheelchair as a necessary treatment for her complaints. Thus, we have a situation where the member's complaints and symptomatology are grossly out of proportion to any physical findings. When asked what she would do if she got out of the Navy, the member said that she would visit a doctor. However, she has visited many doctors to no avail. There is no evidence that the member has any underlying organic pathology. Therefore, there is no evidence that this is a separately unfitting condition.

The member's final complaints are psychiatric. First, the member has an addendum which was dictated on 11 December 1998 and was in response to a visit by the member to her psychiatrist after she got the fit for duty finding. The addendum makes a diagnosis of major depressive disorder mild, but there is nothing in the write-up which would support such a

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diagnosis. Apart from the "relational breakup" in 1993/94, there is no evidence that the member has ever been depressed. The member reported that after she got her fit for duty finding, she went home and drank a fifth of rum and sat awake all night ruminating about her situation. Under marital history, the evaluating psychiatrist notes that the member has never been married, but after the break-up with the father of her child, she suffered an eight month period of "depressed mood, anhedonia, hopelessness, and confusion." However, she never received any treatment beyond counseling, was never medicated, and never hospitalized. Furthermore, her performance evaluations for that period indicate that she continued to perform well above standards during this period. The mental status examination for this addendum in December 1998 notes that the member demonstrated no psychomotor retardation, her speech was normal, and there is no mention of neurovegetative symptoms and the member denied suicidal ideation. Apart from a mention that the member's mood was depressed, angry and tearful, there is absolutely nothing in the report that could be construed as abnormal. Based on these data, there is no way to substantiate a diagnosis of major depressive disorder. The member would be more reasonably diagnosed as suffering from a phase of life problem or perhaps at most an adjustment disorder with depressed mood. The member testified that she is on no medication and only sees her psychiatrist once a month. Furthermore, at the time this addendum was written, the member was just promoted to first class petty officer because of her outstanding performance. Her performance evaluations for the same period show that she continued to perform very well.

The member's counsel asked for a possible rating as EPTS dysthymic disorder. However, there were no data offered to substantiate this diagnosis either. Apart from the member's assertion that her childhood was unpleasant because her father was physically and mentally abusive, there were no data to suggest that the member had ever suffered any psychiatric disorder based on this abusive childhood. In fact, the member testified that she graduated from high school a year early because of her outstanding performance. The member showed a burn on her right hand and forearm from being scalded as a baby, but she could not remember the episode and did not assert that this had been done to her intentionally by her father.

In sum, we have a member who has a long history of superb performance and has most recently been promoted to first class petty officer in spite of the fact that she is approximately fifty pounds overweight. The member has extremely dramatic complaints without any objective substantiating data. The member is currently a single parent who is facing orders to sea duty if she is found fit for duty. She has also recently reenlisted and received an accelerated reenlistment bonus. She has campaigned vigorously to be found unfit for continued naval service based on some sort of a disability, but there are no substantiating data to warrant such a finding. Therefore, after careful consideration of all relevant

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medical evidence, the formal board finds the member fit for continued
naval service.

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