



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

JRE
Docket No: 4637-01
6 March 2002



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 28 February 2002. 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.

The Board noted that in order for a service member to be separated or retired by reason of physical disability, he must be unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. The Board was not persuaded that you were unfit for duty because of your bilateral knee conditions. In this regard, it substantially concurred with the enclosed rationale of a hearing panel of the Physical Evaluation Board, dated 24 May 1996. There is no question that you had a long history of knee problems; however, you continued to perform your duties in a very creditable manner despite those problems.

The Board noted that you underwent a pre-separation physical examination during February 1997, and were found physically qualified for separation, as well as for "retention on active duty at sea, in the field or on foreign or domestic shores." You did not disclose any conditions you felt were disqualifying for further service at that time, despite being admonished to do so, and you specifically denied having a history of frequent trouble sleeping, depression or excessive worry, loss or memory or amnesia, or nervous trouble of any sort. You were voluntarily discharged on 1 June 1997, and assigned a reenlistment code

of RE-1A, which indicates you were eligible and recommended for further service. The fact that the Department of Veterans Affairs (VA) as awarded you substantial disability ratings for multiple conditions was not considered probative of error or injustice in your case, because the VA makes such awards without regard to the issue of fitness for military duty. None of the conditions rated by the VA rendered you unfit for duty in 1997 or significantly impaired your ability to perform your duties. It does not appear that you suffered from depression, post traumatic stress disorder or other significant mental disorder prior to your discharge.

In the absence of evidence which demonstrates that you were unfit for duty at the time of your discharge, the Board was unable to recommend any corrective action in your case. 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

Subj: DISABILITY EVALUATION FINDINGS OF THE PHYSICAL EVALUATION BOARD [REDACTED]

AUTHENTICATION

PANEL MEMBERSHIP

[REDACTED]
PRESIDING OFFICER

COUNSELING CERTIFICATION: ALL COUNSELING REQUIREMENTS OF
SECNAVINST 1850.4C HAVE BEEN MET.

[REDACTED]
NAME, RANK, AND SIGNATURE OF COUNSELOR

02 MAY 1996
DATE

MEMBER'S STATEMENT OF UNDERSTANDING:

I UNDERSTAND THAT THE RECOMMENDED FINDING OF FIT FOR DUTY IS SUBJECT TO LEGAL AND QUALITY ASSURANCE REVIEWS AND APPROVAL BY THE PRESIDENT OF THE PEB. THE FINDING LETTER SIGNED BY THE PRESIDENT, PEB IS THE FINAL DETERMINATION AND CAN ONLY BE CHANGED IF A PETITION FOR RELIEF FROM FINAL ACTION IS ACCEPTED BY THE DIRECTOR OF NCPB. A PETITION FOR RELIEF MUST BE RECEIVED BY THE DIRECTOR, NCPB NOT LATER THAN 15 DAYS FROM RECEIPT OF THE FINAL DETERMINATION. I HAVE BEEN COUNSELED CONCERNING THE PROVISIONS OF PARAGRAPH 6005 OF SECNAVINST 1850.4C.

[REDACTED] MC
NAME, RANK, AND SIGNATURE OF MEMBER

02 MAY 1996
DATE

FOR ACTIVE DUTY MEMBERS - COMPLETE MAILING ADDRESS OF COMMAND/PSD HOLDING MEMBER'S SERVICE RECORD.
FOR TEMPORARY DISABILITY RETIRED LIST MEMBERS (TDRL) - COMPLETE HOME ADDRESS AND DAYTIME PHONE NUMBER.

HQSV BN III MEF (SOTG)

FPO AP 96606-5601

Subj: DISABILITY EVALUATION FINDINGS OF THE PHYSICAL EVALUATION

[REDACTED]

LEGAL REVIEW

DATE TO REVIEWER: _____

THE RECORD OF PROCEEDINGS OF THE PEB HAS BEEN REVIEWED FOR LEGAL SUFFICIENCY AS REQUIRED BY SECNAVINST 1850.4C AND IS LEGALLY UNOBJECTIONABLE.

[REDACTED]

5.23.96

NAME, RANK, AND SIGNATURE OF LEGAL REVIEWER

DATE

PEB ELIGIBILITY DETERMINATIONS

N/A