



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

JRE  
Docket No: 5449-00  
14 August 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 9 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 10 August 1999, a copy of which is attached. The statement from the Medical Corps officer you submitted does not contain significant new evidence concerning your ankle disability. There is no basis for concluding that you suffered from separately unfitting conditions of the hip or knee. The Board concluded that your disability was properly rated at 20%. 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

**RATIONALE:**

THE MEMBER IS A 44 YEAR OLD CE1, USNR(RET) WITH ABOUT 4 YEARS OF ACTIVE SERVICE AND 12 YEARS OF RESERVE SERVICE AT THE TIME HE WAS PLACED ON THE TDRL ON 17 JUNE 1997 WITH A DISABILITY RATING OF 40% UNDER V.A. CODE 5299-5270-5284, LESS AN EPTE FACTOR OF 0%, FOR A TOTAL RATING OF 40%, FOR THE DIAGNOSES:

- (1) POST TRAUMATIC OSTEOARTHRITIS RIGHT ANKLE, STATUS POST SURGICAL FUSION; AND
- (2) HEALED ANKLE FUSION WITH PIN TRACT INFECTION.

THE MEMBER UNDERWENT TDRL EVALUATION ON 3 FEBRUARY 1999 AT FORT KNOX, KENTUCKY. THE INFORMAL PEB CONSIDERED THE CASE ON 1 APRIL 1999 AND FOUND THE MEMBER UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY THAT WAS RATABLE AT 20% UNDER V.A. CODE 5299-5270-5284. THE MEMBER DISAGREED WITH THIS FINDING AND DEMANDED A FORMAL HEARING.

A FORMAL HEARING WAS CONDUCTED ON 10 AUGUST, 1999 AT BETHESDA, MARYLAND WITH COLONEL E. G. BEINHART, III, USMC, AS PRESIDING OFFICER, COLONEL L. M. BULTEMEIER, USN, AND CAPTAIN L. E. MCCRACKEN, MC, USN, AS PANEL MEMBERS. THE MEMBER WAS REPRESENTED BY LIEUTENANT W. G. PERDUE, JAGC, USNR.

THE MEMBER APPEARED AT THE HEARING REQUESTING TO BE FOUND UNFIT FOR DUTY WITH A DISABILITY RATING OF 30% UNDER V.A. CODE 5299-5270 AND PLACEMENT ON THE PDRL. TO SUPPORT HIS REQUEST THE MEMBER PRESENTED TESTIMONY, COPIES OF HIS V.A. MEDICAL RECORDS AND RATING DECISIONS, COPIES OF ENTRIES FROM HIS MILITARY TREATMENT RECORDS NOT ALREADY INCLUDED IN THE CASE FILE, AND NON-MEDICAL EVIDENCE LETTERS FROM HIS PASTOR, THREE FRIENDS, AND ONE OF HIS INSTRUCTORS AT THE ITT TECHNICAL INSTITUTE.

AFTER CAREFUL REVIEW OF ALL THE AVAILABLE EVIDENCE AND BASED ON UNANIMOUS OPINION, THE FORMAL PEB FINDS THE MEMBER REMAINS UNFIT FOR FULL DUTY IN THE U.S. NAVY BECAUSE OF PHYSICAL DISABILITY. THE RECORD DOCUMENTS THAT THE MEMBER INITIALLY SUSTAINED A FRACTURE TO HIS RIGHT ANKLE IN A MOTOR VEHICLE ACCIDENT IN 1979 UNRELATED TO HIS MILITARY SERVICE. HOWEVER, THIS HEALED WITH NO RESIDUAL IMPAIRMENT. THE MEMBER THEN REINJURED THE ANKLE IN APRIL 1995 DURING A PERIOD OF ANNUAL RESERVE TRAINING IN GUATAMALA WHEN HE FELL OFF SOME SCAFFOLDING. THIS REQUIRED AN ARTHROSCOPIC FUSION IN OCTOBER 1995 THAT WAS LATER DETERMINED TO HAVE FAILED AND REQUIRED A REPEAT FUSION WITH OPEN BONE GRAFT AND AN EXTERNAL FIXATOR THAT WAS

COMPLICATED BY INFECTION. THIS HAS NOW HEALED. THE RECORD DOCUMENTS THAT HE HAS NO MOTION AT THE TIBIOTALAR JOINT AND CONTINUOUS PAIN THAT LIMITS HIS ACTIVITIES SUCH THAT IT WOULD INTERFERE WITH THE ADEQUATE PERFORMANCE OF REQUIRED MILITARY DUTIES.

THE MEMBER'S TESTIMONY ALSO INDICATED THAT BECAUSE OF THE LACK OF MOTION AT THE ANKLE, HE TENDS TO WALK WITH HIS FOOT TURNED OUT RESULTING IN PAIN IN HIS KNEE AND HIP. BECAUSE IT WAS UNCLEAR FROM THE TDRL EVALUATION AND THE V.A. MEDICAL RECORDS THE POSITION IN WHICH THE ANKLE WAS FUSED, THE HEARING WAS RECESSED AND AN ORTHOPEDIC EVALUATION AT THE NATIONAL NAVAL MEDICAL CENTER WAS OBTAINED TO DETERMINE THE POSITION OF THE FUSION. THIS EVALUATION INDICATED THE ANKLE WAS FUSED WITH THE FOOT IN 3 DEGREES OF PLANTAR FLEXION. THIS MEETS THE CRITERIA FOR THE 20% RATING UNDER V.A. CODE 5299-5270 BUT NOT THE 30% RATING SINCE THAT WOULD REQUIRE ANKYLOSIS IN 0 TO 10 DEGREES OF DORSIFLEXION. THEREFORE, THE DISABILITY IS RATED AT 20% UNDER V.A. CODE 5299-5270.