



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

JRE
Docket No: 5920-00
13 March 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 1 March 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 23 April 1992, a copy of which is attached. It was not persuaded that your asthma was ratable above 10%, or that your cervical dysplasia was unfitting or ratable. There is no indication in the available records that you suffered from any other unfitting conditions at that time. The fact that the Department of Veterans Affairs awarded you a disability rating for a back condition was not considered probative or the existence of material error or injustice in your record because that agency awards ratings without regard to the issue of fitness for military duty.

In view of the foregoing, 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 29 YEAR MAC, USN, WITH ABOUT 12 YEARS OF SERVICE AT THE TIME OF HER APPEARANCE BEFORE A MEDICAL BOARD AT CHARLESTON NAVAL HOSPITAL ON 4 DECEMBER 1991 WITH THE DIAGNOSES:

- (1) ASTHMA;
- (2) HISTORY OF TOBACCO ABUSE; AND
- (3) DYSPLASIA OF THE CERVIX; TREATED.

THE PEB RECORD REVIEW PANEL CONSIDERED THE CASE ON 22 OCTOBER 1991, AND FOUND THE MEMBER UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY RATABLE AT 10% UNDER V.A. CODE 6602 FOR THE ASTHMA; THE HISTORY OF TOBACCO ABUSE WAS CONSIDERED A CATEGORY IV CONDITION THAT DOES NOT CONSTITUTE A PHYSICAL DISABILITY, AND THE DYSPLASIA OF THE CERVIX WAS NOT LISTED ON THE FINDINGS. THE MEMBER SUBMITTED A REBUTTAL TO THESE FINDINGS, WITH ADDITIONAL MEDICAL EVIDENCE REGARDING THE DYSPLASIA OF THE CERVIX. THE CASE WAS AGAIN CONSIDERED BY THE RRP ON 11 FEBRUARY 1992, WITH THE ABOVE FINDINGS BUT ALSO LISTING THE CERVIX DYSPLASIA AS A CATEGORY III CONDITION. THE MEMBER DISAGREED WITH THIS FINDING AND DEMANDED A FORMAL HEARING.

THE MEMBER APPEARED AT THE FORMAL HEARING CONDUCTED 23 APRIL 1992, REPRESENTED BY D.A.V. COUNSEL, MR JOE RICE, AND REQUESTING TO BE FOUND UNFIT FOR DUTY WITH A DISABILITY RATING OF 30% UNDER V.A. CODE 6602 AND PLACEMENT ON THE TDRL. THE MEMBER ALLEGED THAT SHE IS EXPERIENCING REPEATED EPISODES OF SHORTNESS OF BREATH, TIGHTNESS IN HER CHEST, AND FATIGUE THAT IS OF MORE THAN A MILD DEGREE AND OCCURRING 4 TO 5 TIMES EVERY 2 WEEKS; THAT SHE NEEDS A CONTROLLED ENVIRONMENT AT HOME AND WORK, AND NEEDS 4 MEDICATIONS; THAT HER CONDITION IS CLOSER TO THE CRITERIA FOR THE 30% DISABILITY RATING UNDER V.A. CODE 6602 THAN TO THE 10% RATING; AND THAT HER CONDITION HAS NOT STABILIZED AND WARRANTS PLACEMENT ON THE TDRL. TO SUPPORT HER REQUEST, THE MEMBER PRESENTED COPIES OF THE RECENT HEALTH RECORD ENTRIES REGARDING HER ASTHMA SINCE THE MEDICAL BOARD REPORT WAS SUBMITTED. THE MEMBER MADE HER HEALTH AND SERVICE RECORDS AVAILABLE FOR REVIEW.

AFTER CAREFUL REVIEW OF ALL THE AVAILABLE EVIDENCE AND BASED ON UNANIMOUS OPINION OF THE HEARING PANEL, THE PHYSICAL EVALUATION BOARD FINDS THE MEMBER IS UNFIT FOR FULL DUTY IN THE U.S. NAVY BECAUSE OF PHYSICAL DISABILITY. THE RECORD DOCUMENTS THAT THE MEMBER IS UNABLE TO TOLERATE SHIPBOARD CONDITIONS, ESPECIALLY IN THE SHIPYARD, WITHOUT EXACERBATION OF HER ASTHMA SYMPTOMS TO THE POINT OF INTERFERING WITH HER PERFORMANCE OF DUTIES.

ENCLOSURE: (1)

ALTHOUGH THE MEMBER TESTIFIED SHE HAS ATTACKS OF ASTHMA OF SUCH SEVERITY THAT SHE IS COMPLETELY INCAPACITATED AND UNABLE TO EVEN SEEK HELP, OCCURRING EVERY 3 TO 4 WEEKS, PLUS MORE FREQUENT LESS SEVERE ATTACKS, THE MEMBER'S TESTIMONY INDICATES THE SEVERE ATTACKS RESOLVE OVER 35 TO 40 MINUTES WITH USE OF HER ATROVENT INHALER AND RELAXATION, AND THAT SHE HAS NOT REQUIRED EMERGENCY MEDICAL TREATMENT BY MEDICAL PERSONNEL SINCE THE ATTACKS ABOARD SHIP BETWEEN DECEMBER 1990 AND JUNE 1991. SHE HAS REQUIRED ONLY A 10 DAY COURSE OF PREDNISONE ON ONE OCCASION IN SEPTEMBER 1991, AND DOES NOT REQUIRE CHRONIC SYSTEMIC STEROID THERAPY. THE RECENT MEDICAL RECORD ENTRIES OF OCTOBER AND DECEMBER 1991 INDICATE THE MEMBER'S ASTHMA IS UNDER EXCELLENT CONTROL AND STABLE, WITH ONLY INTERMITTENT SHORTNESS OF BREATH UNDER TREATMENT WITH AZMACORT AND ATROVENT INHALERS, CROMOLYN SODIUM, AND SELDANE, ALONG WITH AVOIDANCE OF THE SHIPBOARD ENVIRONMENT. AT THE TIME OF BOTH HEALTH RECORD ENTRIES, THE LUNGS WERE CLEAR TO AUSCULTATION WITHOUT WHEEZING. THE MEMBER'S TESTIMONY ALSO INDICATES SHE ENGAGES IN AEROBIC EXERCISE ROUTINES FOR 50 MINUTES ABOUT 3 TIMES A WEEK, AND WHEN UNABLE TO PARTICIPATE IN THE AEROBICS, SHE GETS OUT AND WALKS A MILE AND HALF AT A MODERATE PACE. ALL OF THE ABOVE IS CONSIDERED MOST CONSISTENT WITH THE MILD DEGREE OF IMPAIRMENT UNDER V.A. CODE 6602 WARRANTING THE 10% DISABILITY RATING.

THE DYSPLASIA OF THE CERVIX IS A CATEGORY III CONDITION THAT IS NOT CONSIDERED SEPARATELY UNFITTING OR CONTRIBUTING TO THE UNFITTING CONDITION, AND THE TOBACCO ABUSE HISTORY IS CONSIDERED A CATEGORY IV CONDITION THAT DOES NOT CONSTITUTE A PHYSICAL DISABILITY.