

DEPARTMENT OF THE NAVY

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

JRE

Docket No: 5936-00

18 June 2001



Dear

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 7 June 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 (NCPB) dated 16 April 2001, a copy of which is attached, and your rebuttal 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. The Board declined to correct your record to show that each knee was rated separately because, as you pointed out in your rebuttal statement, such action would not result in your retirement, or accord you any effective relief. As you have not demonstrated that you should have been retired by reason of physical disability, vice discharged with entitlement to disability severance pay, 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: 01-15 16 Apr 01

From: Director, Naval Council of Personnel Boards

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: 05936-00 of 27 Mar 01
- (b) SECNAVINST 1850.4D
- 1. This letter responds to reference (a) which requested comments and a recommendation regarding Petitioner's request for correction of his records. On 26 May 2000, the Petitioner was discharged from the U.S. Marine Corps with a disability rating of 10%. The Petitioner is seeking to have his record corrected to reflect at least a 30% disability rating.
- 2. The Petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following information and recommendations are provided:
- a. The Petitioner was separated from active duty on 26 May 2000 and was given a 10% disability rating by the Informal Physical Evaluation Board (PEB). The Petitioner accepted this rating and did not exercise his right to a formal hearing.
- b. It appears that Petitioner was in the recovery phase of fairly definitive bilateral arthoscopic treatment by the time of his 26 May 2000 discharge, though his condition, likely, remained unfitting.
- c. Hence, both knees appear to have manifested unfitting pathology while Petitioner was on active duty. The following retrospective modification of Petitioner's PEB findings is suggested:

CATEGORY I: Unfitting conditions:

1. Chondromalacia of Patella of the knee, Bilateral, status Post-arthroscopic repair (7177)

> Left 5299-5003 70% Right 5299-5003 10%

19% 1.9%

20.9%=20%

CATEGORY II

- 2. Status post Arthroscopic Repair of Internal Derangement of the Knee, Bilateral, contributes to #1
- 3. In summary, the Petitioner's record suggests an unfitting condition in both knees. The above-mentioned modification is appropriate based upon his condition at the time of his discharge.

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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.

