



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

JRE
Docket No. 03040-03
29 August 2003



Dear Mr. 

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 August 2003. 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, it substantially concurred with the rationale of the hearing panel of the Physical Evaluation Board that considered your case on 15 August 1991. A copy of the rationale is attached.

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

[REDACTED], ENFN, USN(RET) [REDACTED]

RATIONALE:

THE MEMBER IS A 29 YEAR OLD ENFN, USN(RET), WITH ABOUT 5 YEARS OF SERVICE AT THE TIME HE WAS PLACED ON THE TDRL IN OCTOBER 1987 WITH A DISABILITY RATING OF 10% UNDER V.A. CODE 5261 AND 20% UNDER V.A. CODE 5262 COMBINED TO A TOTAL DISABILITY RATING OF 30% FOR THE DIAGNOSES:

- (1) LEFT CLOSED FEMUR FRACTURE HEALED;
- (2) LEFT GRADE III OPEN TIBIA FRACTURE, STATUS POST MULTIPLE BONE GRAFTING, HEALED; AND
- (4) STATUS POST LATISSIMUS FLAP TO THE LEFT TIBIA.

DIAGNOSIS (3) GRADE III OPEN RIGHT TIBIA FRACTURE HEALED WAS CONSIDERED NOT SEPARATELY UNFITTING OR CONTRIBUTING TO THE UNFITTING CONDITIONS.

ACCORDING TO THE TDRL REPORT OF 15 JANUARY 1991 AND OTHER AVAILABLE RECORDS, THE MEMBER IS EMPLOYED AS A MAINTENANCE WORKER AT A FOAM AND RUBBER PLANT WITH NO PROBLEMS PERFORMING THE JOB WHICH INVOLVES AMBULATION FOR CHECKING METERS AND EQUIPMENT THROUGHOUT THE FACTORY AND WITH NO EXTENSIVE LOSS OF TIME FROM WORK. HE CONTINUES TO REPORT DIFFICULTIES WITH HIS LEFT LOWER EXTREMITY. EXAM WAS REPORTED TO SHOW FULL RANGE OF MOTION IN THE LEFT HIP, NUMEROUS SCARS OVER THE LEFT KNEE WITH GROSS DEFORMITY INFERIOR TO THE LEFT KNEE FROM THE FRACTURE SITE, PAINLESS MOTION IN THE KNEE FROM 0 TO 95 DEGREES BUT TENDERNESS BEYOND THIS RANGE, DEFORMITY OF THE LEFT TIBIA BUT WITH GOOD HEALING OF THE LATISSIMUS DORSI FLAP WITHOUT TENDERNESS, FULL RANGE OF MOTION IN THE LEFT ANKLE, AND IN THE RIGHT LOWER EXTREMITY A SMALL INDENTATION AT THE ANTERIOR, INFERIOR ASPECT OF THE KNEE FROM THE FRACTURE AND IM NAILING OF THE TIBIA/FIBULA FRACTURE. X-RAYS SHOWED THE FRACTURES TO BE WELL HEALED AND RETAINED HARDWARE IN THE LEFT TIBIA/FIBULA FRACTURES, AND A RETAINED IM NAIL IN THE LEFT FEMUR.

THE PEB RECORD REVIEW PANEL CONSIDERED THE CASE ON 7 FEBRUARY 1991 AND FOUND THE MEMBER UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY RATABLE AT 0% UNDER V.A. CODE 5261 AND 10% UNDER V.A. CODE 5262. THE MEMBER DISAGREED WITH THIS FINDING AND SUBMITTED A REBUTTAL REQUESTING ADDITIONAL EVALUATION. THE CASE WAS REFERRED TO A FORMAL HEARING.

ENCLOSURE: (1)

THE MEMBER DID NOT APPEAR AT THE FORMAL HEARING CONDUCTED 15 AUGUST 1991 BECAUSE APPOINTED COUNSEL FOR THE MEMBER HAD NOT BEEN ABLE TO CONTACT THE MEMBER THROUGH AVAILABLE ADDRESS OR PHONE NUMBERS, AND NOTIFICATION TO THE MEMBER OF THE DATE OF THE HEARING HAD BEEN RETURNED UNDELIVERED. LEGAL COUNSEL FOR THE MEMBER REQUESTED ON BEHALF OF THE MEMBER THAT HE BE RETAINED ON THE TDRL, ALLEGING THAT THE CONDITION DOES NOT APPEAR STABILIZED AND HAS NOT IMPROVED TO THE 10% LEVEL; AND THEREFORE, THE MEMBER SHOULD BE GIVEN BENEFIT OF DOUBT AND RETAINED ON THE TDRL FOR AN ADDITIONAL EVALUATION AS REQUESTED IN THE MEMBER'S REBUTTAL LETTER.

AFTER CAREFUL REVIEW OF ALL THE AVAILABLE EVIDENCE AND BASED ON UNANIMOUS OPINION OF THE HEARING PANEL, THE PHYSICAL EVALUATION BOARD FINDS THE MEMBER REMAINS UNFIT FOR FULL DUTY IN THE U.S. NAVY BECAUSE OF PHYSICAL DISABILITY. THE RECORD DOCUMENTS THAT ALTHOUGH THE MEMBER'S FRACTURES HAVE HEALED, HE CONTINUES TO HAVE SOME COMPLAINTS OF DISCOMFORT AND IMPAIRMENT IN THE LEFT LEG THAT WOULD INTERFERE WITH THE ADEQUATE PERFORMANCE OF NAVAL DUTIES ABOARD SHIP AT SEA. ALTHOUGH THE CURRENT TDRL REPORT DOCUMENTS LITTLE IN THE WAY OF IMPAIRMENT EXCEPT FOR SOME PAIN LIMITING MOTION IN THE RIGHT KNEE, THE MEMBER'S REBUTTAL LETTER INDICATES HE ALSO HAS PAIN AND LIMITED MOTION IN THE LEFT ANKLE, SOME LIGAMENOUS INSTABILITY IN THE KNEE, PLUS ARTHRITIS IN THE LEFT HIP, AND THE PREVIOUS TDRL REPORT OF MARCH 1989 DID INDICATE SOME DECREASED MOTION IN THE LEFT HIP. THE MEMBER'S REBUTTAL DID NOT MENTION ANY PROBLEM IN THE RIGHT LEG. THEREFORE, THE MEMBER IS GIVEN BENEFIT OF DOUBT AND ASSIGNED A DISABILITY RATING OF 10% UNDER V.A. CODE 5255 FOR THE LEFT FEMUR FRACTURE WITH RESIDUAL IMPAIRMENT IN THE HIP AND KNEE, AND A 10% RATING FOR THE RESIDUAL KNEE AND ANKLE IMPAIRMENT FROM THE LEFT TIBIA/FIBULA FRACTURE. THESE COMBINE TO 19% ROUNDED TO 20%. THE DISABILITY IS CONSIDERED PERMANENT.