



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

JRE
Docket No: 2336-00
18 June 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 17 May 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 comments of your counsel.

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 found that you enlisted in the Navy on 27 December 1985. You were promoted to ETC(SS) effective 16 August 1994. A medical record entry dated 19 February 1996 [sic] indicates that you had reported difficulty sleeping, weight loss, low self-esteem, self destructive thoughts, somatic difficulties, tightness in the chest and chronic feelings of sadness, as well as increased argumentativeness with your spouse. You had previously received psychiatric care from a non-military source, and been placed on Paxil. A medication consultation was requested by Navy medical personnel to determine if you needed medication, and if so, whether Paxil was the correct one. You were evaluated by a Navy psychiatrist on 11 March 1997, and reported that you felt the Paxil was helping and that you were feeling much better. You indicated that you planned to complete your Navy obligation in June 1997 and leave the Navy at that time. The psychiatrist's diagnostic impression was that you suffered from Dysthymic Disorder, not otherwise specified, resolving. He planned to gradually reduce the dosage of Paxil until it was discontinued. You were seen by a Navy psychologist on 4 April 1997, and your mental status was considered "basically" within

normal limits; however, considerable anger was noted regarding the manner in which you felt you were being treated by your command. Your anger was assessed as "appropriate and needed in an effort to work through his feelings of helplessness and victimization." It was also noted that you had marital problems, and your spouse was characterized as emotionally abusive. You were said to have good future planning, and no suicidal or homicidal thoughts or plans, or hallucinations, delusions or illusions. On 27 March 1997, you were noted to be doing "quite well" on a reduced dosage of medication, and the diagnosis of Depressive Disorder, not otherwise specified, resolving, was confirmed. You underwent a pre-separation physical examination on 11 April 1997, and reported that you were in good health, and taking Paxil for depression. It was noted in Standard Form 88, Report of Medical Examination, item 74, Summary of Defects and Diagnoses, that you needed minor dental care, and that you had marks and scars, visual refractive error, and hypercholesterolemia, which were not considered disqualifying, as well as dysthymia which was treated with Paxil, and considered disqualifying for submarine duty. The physician who conducted the examination found you qualified for all duties at sea, on foreign shores, and for separation, but not qualified for submarine duty. On 18 April 1997, you reported that you had problems with your marriage, specifically that you felt your wife was blaming you for leaving the Navy, and that she was not happy with your prospective job. Your previous diagnosis was confirmed, and a diagnosis of Marital Problem was added at that time. On 1 May 1997, the depressive disorder was reclassified as "Resolved". You were seen for psychological follow-up and termination of treatment on 15 May 1997. Your mental status was assessed as within normal limits, and your mood euthymic. There were no signs of psychosis, neurovegetative signs or depressive symptoms. You indicated you planned to continue to work with your spouse so that she would be more supportive of you and your new job. You were considered symptom free, and fit for full duty. You sought follow-up consultation on 28 May 1997, and reported that your prospective employer had withdrawn its job offer. Your condition was once again assessed as Depressive Disorder, Resolved. Further follow-up treatment was not indicated at that time. You were discharged from the Navy on 3 July 1997 by reason of completion of required service. You were assigned a reenlistment code of RE-1, to indicate that you were eligible and recommended for further service, and could have reenlisted had you wanted to do so.

On 7 January 1998, the Department of Veterans Affairs (VA) awarded you disability ratings of 0% for dysthymic state and conditions of your hips and left shoulder, and 10% ratings for ligament damage in each knee. The VA denied your request for service connection for conditions of the little finger of the right hand and left wrist. The 0% rating was assigned for your dysthymic state because your symptoms were not severe enough to interfere with occupational and social functioning, or to require continuous medication. VA examiners found no impairment of thought or communication, no delusions or hallucinations, inappropriate behavior, suicidal or homicidal thoughts, memory loss, obsessive or ritualistic behaviors, or panic attacks. You reported that you sometimes felt a little "down in the dumps", and occasionally had trouble sleeping. The symptoms of your orthopedic complaints were mild in nature. On 10 June 1999, the VA increased the rating for your mental disorder to 30% , effective from 18 November 1998. The increase was based on a report of treatment dated 30 November 1998, and a VA rating examination conducted on 4 May 1999, which indicated your depressive symptoms had increased in severity

The Board noted that in order to qualify for disability separation or retirement from the Armed Forces, a service member must be found unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. Disability ratings, if assigned, are fixed as of the date of separation or permanent retirement. A service member will be referred for disability evaluation when the member's ability to reasonably perform military duty is in doubt. The inability to qualify for specialized duties requiring a high degree of fitness, such as flying or submarine duty, does not necessarily imply physical unfitness, and does not require the referral of the affected member for disability evaluation processing. In your case, you were considered disqualified from submarine duty, but otherwise fit for duty and separation. You had no right to be referred for disability evaluation, and there was no basis therefor. As noted above, your condition was classified as "resolved" prior to your discharge, and it remained quiescent at the time you submitted your initial VA claim. Your orthopedic problems were mild in nature, and not unfitting. The Board rejected your unsubstantiated contention to the effect that you were denied a medical board in retaliation for your filing an Article 138 complaint against your commanding officer.

The fact that you received combined VA ratings of 20% from 4 July 1997, and 50% from 18 November 1998, is not probative of the existence of material error or injustice in your case. In this regard, the Board noted that the VA assigns ratings without regard to the issue of fitness for military duty. In addition, the VA may raise or lower a veteran's disability ratings throughout his life time as the severity of the rated conditions changes. As you have not demonstrated that you were unfit for duty at the time of your voluntary discharge from the Navy, the Board was unable to recommend any corrective action in your case.

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