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

JRE
Docket No: 6384-99
10 July 2001

[redacted]

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 28 July 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 opinions furnished by the Navy Specialty Leader for Cardiology, dated 14 July 2000 and the Director, Naval Council of Personnel Boards, dated 4 January 2001, and the information you submitted in response thereto. A copy of each opinion is attached.

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 opinions. It noted, however, that fitness determinations are made for the Secretary of the Navy by officials of the Disability Evaluation System (DES), rather than the Bureau of Medicine and Surgery. The specialty leader's statement that you would have been temporarily unfit as a submariner for at least six months after your first episode of atrial fibrillation does not support the conclusion that you had a life threatening heart condition, or that you were unfit to perform the duties of your office, grade, rank, or rating because of a heart condition. The Board was not persuaded that you received substandard or inadequate medical care prior to your transfer to the Temporary Disability Retired List, that your condition was misdiagnosed, or that you were unfit for duty because of the effects of a heart condition. Although it is very unfortunate that you went on to develop paroxysmal atrial fibrillation, the deterioration of your condition following your release from active duty is not probative of the existence of error or injustice in your case.

With regard to the issue of whether or not you were accorded just treatment by the DES, the Board noted that you could have been found fit for duty under the presumption of fitness (PFIT) rule then in effect, because your condition was not life threatening, and not likely to result in either death or significant life-span reduction, or deteriorate to the point where it would warrant a disability rating of 100 percent. It appears that the you were given the benefit of the doubt by the PEB, and found unfit for duty notwithstanding the PFIT rules, because of the possibility that avascular necrosis would develop in your hip and render you totally disabled.

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

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

5420
Ser: 01-01
4 Jan 2001

From: Director, Naval Council of Personnel Boards
To: Executive Director, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF [redacted]

Ref: (a) Chairman, BCNR JRE:jdh DN: 6384-99 ltr of 23 Oct 00
(b) SECNAVINST 1850.4D

1. This responds to reference (a) which requested comments and a recommendation regarding petitioner's request for correction of his records to show that he was entitled to a thirty percent disability rating under VASRD Code 7018-7010 (SUPRAVENTRICULAR ARRHYTHMIAS & PACEMAKER PLACEMENT) at the time of his placement on the TDRL in 1996. We have determined that the evidence in this case does not support the petitioner's request for a change to records.

2. The petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments and recommendations are provided.

a. Petitioner suffered a single episode of Post-Traumatic Atrial Fibrillation most likely incident to the chest trauma (Right Pneumothorax secondary to rib fractures) accompanying his 30 September 1995 bicycle accident while on terminal leave. The aforementioned arrhythmia would have likely rendered petitioner medically disqualified/unfit to remain in the submarine community, but would not have made him Unfit for general duty at the time of his placement on the TDRL in accordance with DOD and Navy regulations governing PEB determinations.

b. Subsequent later progression and recurrence of the arrhythmia while on the TDRL in conjunction with the requirement for a pacemaker renders the petitioner currently Unfit for Duty. This situation exemplifies the difference between service connection, which is certainly established in this case, for VA rating purposes, and ratability due to unfitness while on active duty which does not appear to have been the case.

c. The classification of member's heart problem as a Category III Condition at the time of his placement on the TDRL (not separately unfitting and not contributing to the unfitting condition) was correct and in accordance with regulations. Further, under both DOD and Navy regulations, TDRL re-evaluations are only to consider the unfitting conditions that resulted in placement on the TDRL. This policy is supported by the language of 10 U.S.C. 1210 which discusses TDRL evaluation and final Secretarial determination only for those conditions for which the member was carried on the TDRL (Category I and II). Exceptions to this policy are made for "New Diagnoses" under SECNAVINST 1850.4D, Section 3618. Because petitioner's heart condition was correctly categorized as Category III at the time of his placement on the TDRL, it did not meet the definition of a new diagnosis and, accordingly, was properly not considered by the formal board in 1999 during their re-evaluation of petitioner's case.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF [redacted]

3. In summary, the record in this case does not support a correction of the petitioner's records as requested. Accordingly, recommend denial of the petitioner's request.

[redacted]

14 JUL 2000

From: Navy Specialty Leader for Cardiology
To: Chairperson, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO [redacted]

Ref: Your request of 20 JUN 2000; Docket No: 6384-99

Encl: (1) BCNR File/Medical Record
(2) Service Record
(3) Disability Evaluation Board Proceedings
(4) VA Records/Medical Records

1. Pursuant to your request, enclosures (1)-(4) were reviewed.

2. The following facts are established:
   a. The member "reportedly" had a normal exercise stress and cardiology evaluation at NNMC Bethesda prior to going on terminal leave in 1995. This is not well documented.
   b. The member suffered injuries while on terminal leave, not while in the line of duty, when he fell off of his bicycle on 30 SEP 95 and suffered orthopedic injuries to his hip and a right pneumothorax from fractured ribs. Post-operatively, he experienced atrial fibrillation with a rapid ventricular response on 02 OCT 95. The ventricular rate was 177 (greater than 100% mphr/age) without evidence of ischemic ST changes (a non-ischemic stress test). He was evaluated for cause with the findings of a normal Ventilation/Perfusion scan on 03 OCT and a normal echocardiogram (including left atrial size of 3.0cm = normal) on 02 OCT. The atrial fibrillation spontaneously converted to sinus rhythm.
   c. The medical board of 09 NOV 95 does list diagnosis #6 as atrial fibrillation resolved #2731. Evaluation on 22 NOV 95, by a Navy Cardiologist, found: "Atrial fibrillation, one episode, resolved. At this time, the most likely explanation for the atrial fibrillation is trauma related and there is minimal risk for future events."
   d. The member however did have recurrence of atrial fibrillation following placement on the TDRL. This is first documented as an admission in OCT 97 at which time he required D.C. cardioversion (which was unsuccessful) and was placed on Sotalol with conversion to normal sinus rhythm. He was re-evaluated with a normal Echocardiogram 05 NOV 97 (LA 35 and EF 75%), a non-ischemic 12 minute Bruce exercise test (4.2mph at 16% grade) and found no evidence of coronary disease on Cardiolite nuclear scanning.
   e. Holter monitoring of his rhythm did document a 2.9 second pause and then a 6 second pause was noted, meeting the criteria for placement of a permanent pacemaker, which took place 13 NOV 97 and was revised 15 NOV 97.
   f. At the TDRL examination of 14 DEC 98, the member was noted to still be on Sotalol and Warfarin for intermittent episodes of atrial fibrillation.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO [redacted]

3. Opinion: Upon review of the facts, I concur that the member would have been temporarily unfit for his MOS as a submariner for at least 6 months after his first episode of atrial fibrillation. However, the member was on terminal leave and further service aboard submarines was not at issue. The presence of atrial fibrillation may have made him unfit for sea duty but would not have necessarily made him unfit for shore duty. A single episode of atrial fibrillation, presumably secondary to a traumatic episode, would not have made him unfit for transfer to the fleet reserve. I believe that the evaluation was complete in OCT 95 (a tachycardia stress test, an echocardiogram, and V/Q scan), that further evaluation at that time was not indicated and that pacemaker placement would not have been indicated or even considered. The episodes of 3+ second pauses did not occur until the member was placed on Sotalol (a beta blocker which does cause sinus node effects) to prevent recurrence of atrial fibrillation. I concur with the Navy Cardiologist's opinion of 22 NOV 95, based upon the facts available at that time. The recurrence of atrial fibrillation or paroxysmal atrial fibrillation could not have been accurately predicted as it occurs in approximately 50% first time cases of atrial fibrillation. It is my opinion, that the PEB action on the report of 06 NOV 95 was correct in not considering the atrial fibrillation as being unfitting. I also concur with the subsequent Cardiologists that the atrial fibrillation could have been caused by the blunt trauma to the chest (resulting in rib fractures and a pneumothorax) but respectfully disagree with the member's opinion that it was caused by the hip fracture and/or the treatment rendered.

Very respectfully,

[redacted]

CAPT, MC, USN