



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

JRE  
Docket No: 5271-01  
10 September 2002



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 5 September 2002. 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 dated 2 July 2002, a copy of which 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 opinion. Accordingly, 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

5220

Ser: 02-11

2 Jul 02

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE  
OF [REDACTED]

Ref: (a) Your ltr JR:jdh Docket No: 05271-01 of 28 May 02  
(b) SECNAVINST 1850.4E

1. This letter responds to reference (a) which requested comments and a recommendation regarding Petitioner's request for correction of his naval records. On 1 September 1971, the Petitioner was placed on the TDRL with a 40% disability rating. He was later placed on the PDRL with the same disability rating. The Petitioner is requesting a retroactive disability rating increase based on non-rated medical conditions that he claims developed as a result of his service.

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

a. The Petitioner appears to be requesting a retrospective additional disability rating for diabetes mellitus and a left lower lobe pulmonary resection. The Petitioner developed Diabetes Mellitus after his active duty service and placement on the TDRL. He contends this condition resulted from damage to his pancreas incident to an abdominal gunshot wound he suffered during combat service in Vietnam. He is also basing his request on an undocumented contention that he underwent an excision of the lower lobe of his left lung while on active duty.

b. There are no specific references to either condition in the health record material submitted. It appears that any damage to the Petitioner's pancreas failed to produce an unfitting diabetic condition while he remained on active duty or on the TDRL. A pancreatic injury would have ordinarily complicated the Petitioner's post-operative recovery sufficiently to warrant mention in his health record. It is

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possible that a post-traumatic diabetes mellitus could potentially form the basis for a ratable service connected disability by the DVA, but there is insufficient documentation to support granting any additional disability rating for this condition by the Navy.

c. The Petitioner's health record does refer to some pulmonary issues, including a left lower lobe pneumonia in April 1961, early in his active duty service. The VASRD contemporary with the Petitioner's placement on the TDRL did include a 30% disability rating for a "lobectomy". Loss of a partial lobe or segment would not have qualified. Documentation of the "lobectomy" is essential for evaluating the Petitioner's eligibility for a rating.

3. In summary, the basis for which the Petitioner was rated and the disability rating at the time of his discharge was appropriate. There is insufficient documentation that either of the Petitioner's conditions, post-traumatic diabetes mellitus or left lower lobe pulmonary resection, existed at the time of his placement on the TDRL or at the time of his subsequent transfer to the PDRL. If evidence of the above conditions exist, reconsideration would be appropriate. Accordingly, at this time his petition should be denied. However, it is highly recommended that the Petitioner apply to the Department of Veterans Affairs for consideration of service connection for his claim.

[REDACTED]  
ERT