



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

JRE
Docket No. 06626-02
9 June 2003

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj:

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Dir, NCPB ltr 5220, serial 03-08, 21 Apr 03
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected to show that she was permanently retired by reason of physical disability. She contends, in effect, the Physical Evaluation Board (PEB) made its judgment in her case more than one year after she underwent an examination while on the Temporary Disability Retired List (TDRL), without considering anything that occurred after the examination was conducted.

2. The Board, consisting of _____ and _____ reviewed Petitioner's allegations of error and injustice on 5 June 2003 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 23 October 1995. She appeared before a medical board on 20 December 1996, and was given a diagnosis of posttraumatic stress disorder, manifested by recurrent and intrusive distressing recollections of the event (allegedly being raped by another Marine), recurrent distressing dreams of the event, intense psychological distress at exposure to cues that symbolize or resemble aspects of the event, efforts to avoid thoughts, feelings, and conversations associated with the event, efforts to avoid activities, places, or people that arose [sic] recollections of the trauma, inability to recall an important aspect of the trauma, diminished interest and participation in significant activities, feelings of detachment and estrangement from others, sense of foreshortened future, difficulty staying asleep, irritability, difficulty concentrating, hypervigilance, and exaggerated startle response. The medical board concluded that her condition manifested itself by severe interference with social adaptability, and moderate interference with civilian industrial capacity. On 28 March 1997, the PEB made preliminary findings that Petitioner was unfit for duty because of the posttraumatic stress disorder, which it rated at 30% disabling. Petitioner accepted those findings on 14 April 1997, and was released from active duty and transferred to the TDRL on 30 June 1997.

d. Petitioner underwent an examination conducted by three Navy mental health professionals on 9 April 1999. The examination report indicates that Petitioner had lived with her boy friend since her release from active duty, and had attended college for about three months. She had not worked outside the home, and enjoyed some social activities, such as going out for dinner, going to the mall, and shopping. She reported chronic depressive symptoms, and the posttraumatic stress disorder symptoms paled in comparison. She received outpatient psychiatric treatment about once per week beginning in July, but not treatment since September 1997. It was noted that the Department of Veterans Affairs (VA) had awarded her a 70% rating for posttraumatic stress disorder with major depression and bulimia nervosa, and 10% ratings for migraine headaches and a hip condition. When asked about how she had dealt with her trauma, she replied that she had not adequately dealt with it, and that she was bothered when she thought about what had occurred. She reported that the investigation of the alleged rapist found no fault by him. She was given a diagnosis of dysthymic disorder, and her global assessment of functioning (GAF) was rated at 59, which reflects moderate symptoms or moderate difficulty in social, occupational or school

functioning. The examiners recommended that she receive treatment at a VA facility, with a view toward removal from the TDRL. On 5 January 2000, the PEB made preliminary findings that she remained unfit for duty because of posttraumatic stress disorder, which it rated at 10%. As two letters notifying Petitioner of the foregoing were returned as undeliverable by the postal service, her case was finalized on 5 April 2000, when the President, PEB, published the Notification of Decision, and requested that the Commandant of the Marine Corps discharge her with entitlement to disability severance pay. Although the date of discharge is not shown in available records, Petitioner indicates she was discharged on 30 April 2000.

e. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards (NCPB) advised the Board, in effect, that the PEB made its findings on 5 January 2000, which was approximately nine months after the 9 April 1999 TDRL examination, rather than one year as claimed by Petitioner. He stated that the PEB requires that medical records be as current as possible, and that Petitioner's application highlights an issue that likely challenges any entity devoted to record review, i.e., the currency of the records being reviewed, and that record review requires an informed judgment call on the part of reviewers. In his opinion, however, that issue has been rendered moot in this case. He pointed out that there is a VA examination report dated 9 November 1999, which included the opinion that Petitioner's clinical picture had remained unchanged as compared to that noted one year earlier. More importantly, it suggested that despite the frustrating nature of her symptoms, her function had not been so impaired "as to prevent her from remaining without medication, hospitalization, or, for practical purposes, any psychiatric treatment." Although that examination report was not available to the PEB when it met on 5 January 2000, the report strongly suggests that her clinical status had not changed appreciably in the interim. In the Director's opinion, the degree of "contended industrially relevant functional impairment attributable to Petitioner's PTSD, is unexplained and inconsistent with a health behavior stance, which has consistently, apparently, excluded availing oneself of psychiatric treatment." Accordingly, he concluded that the evidence is insufficient to warrant recommending a change in the PEB finding.

f. On 11 January 2000, the VA confirmed its previous combined rating of 80% for Petitioner's psychiatric and physical conditions. The rating was based on a review of medical records and the aforementioned report of examination dated 9 November

1999. That report indicates that she complained of nightmares, flashbacks, intrusive thoughts, hypervigilance, and insomnia, fear of Marines, decreased interest in sex, as well as anxiety, depression and bulimia nervosa. She was given diagnoses of posttraumatic stress disorder, major depressive disorder, bulimia nervosa and alcohol abuse, and a GAF score of 45, which indicates she was experiencing serious symptoms or serious impairment in functioning.

g. The rating guidance for mental disorders contained in SECNAVINST 1850.4D, then in effect, provided, in part, that the 10% rating is appropriate in those cases where there is occupational and social impairment due to mild or transient symptoms that decrease work efficiency and ability to perform occupational tasks only during periods of significant stress; or where symptoms controlled by continuous medication. The 30% rating is appropriate when there is occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with routing behavior, self-care, and conversation normal, due to such symptoms as depressed mood, anxiety, suspiciousness, panic attacks, chronic sleep impairment, and mild memory loss.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (2), and after resolving reasonable doubt in Petitioner's favor, the Board concludes that Petitioner should have been permanently retired by reason of physical disability. In this regard it concludes that although the impairment caused by Petitioner psychiatric condition is not so severe as to warrant a rating of 70%, as assigned by the VA, it is more severe than indicated by the 10% rating assigned by the PEB. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was not discharged from the Marine Corps by reason of physical disability.

b. That Petitioner's naval record be further corrected to show that the Secretary of the Navy determined that Petitioner's

condition was permanent and ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number 9411; and that accepted medical accordingly, the Secretary directed that she be permanently retired by reason of physical disability effective the date of the removal of her name from the TDRL and discharge from the Marine Corps, pursuant to 10 U.S. Code 1201.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

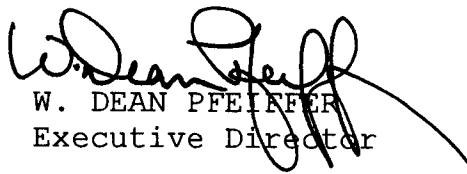
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder




JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER
Executive Director

Reviewed and approved: JUN 17 2003



Assistant General Counsel
(Manpower and Reserve Affairs)