



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 9709-96

25 August 1999

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 29 July 1999. 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 a designee of the Orthopedic Specialty Advisor dated 30 January 1998, and the Director, Naval Council of Personnel Boards dated 28 May 1999, 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 provided by the Director, Naval Council of Personnel Boards. It was not persuaded that your back condition was incurred in or aggravated by your brief period of naval service. That conclusion is based in part on disclosures you made on 3 July 1986 to a general medical officer and an orthopedic specialist concerning your long history of low back pain, and use of two brand named medications for treatment of that condition. In addition, it noted that your medical board report contains information concerning the preexisting nature of the condition, which you did not contest or rebut at that time. 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

30 January 1998

From: CDR Glen Ross MC USN
To: Chairman, Board For Correction of Naval Records, Washington, D.C. 20370-
Via: Orthopaedic Specialty Advisor
Subj: APPLICATION FOR CORRECTION OF NAVAL RECORDS ICO [REDACTED]

Encl: (1) BCNR file
(2) Service Record
(3) VA Records/Medical record

Ref: (a) SECNAVINST 1850.4C

1. In his petition of 18 Dec. 1996 [REDACTED] is requesting retroactive entitlement of benefits from the date of his physical examination for discharge from active duty. Enclosures (1-3) have been reviewed in accordance with reference (a) and is returned herewith.

2. Case History: Review of all medical records and transcriptions revealed that the patients underwent a standard service entry medical exam in May 1998. At that time he noted no history of low back pain or problems. Of importance to this case is his history of a serious motorvehicle accident in 1979 requiring a two week hospitalization, splenectomy, with repair of several lacerations. In addition he had rib fractures and a hemopneumothorax . A point of contention in the intervening years is whether the patient had a history of back pain after the injury. He claims he did not. 200

On 16 June 1986 he presented with a three day history of low back pain without injury during boot camp. This pain may have started after situp training. He was diagnosed with lumbar strain and treated with appropriate medications, therapy , and relative rest. Vital signs were normal, no radiculopathy was documented. He did not improve over the next week, and in fact appeared to be worsening during his next two clinic visits. X rays were ordered, which showed normal alignment, and he was followed on 03 July 1986.

The visit on 03 July 1986 assumes critical importance in this case. He was seen first by LT Carlos Ortiz (?GMO) who notes mechanical low back pain, with no evidence of disc disease. His history, however, notes for the only time documented, multiple episodes of back pain after the 1979 vehicular injury. There is documentation in the note that the patient was told by a recruiter not to mention this issue. Upon scrutinizing all records, this is the only instance that documentation of possible preexisting back problems is noted.

The patient had a medical board dictated at this time. He was seen by [REDACTED] in orthopaedic surgery on 07 July 1986. X rays were felt to be normal and a diagnosis of mechanical low back pain without radiculopathy was made. Examination documented at that time substantiates this diagnosis. No further testing was warranted, and a medical board for service separation was performed. Diagnosis was mechanical low back pain , existed prior to enlistment (EPTE).

After separation, the patient went on to develop left hip pain, left leg pain, and symptoms lasting 2-3 months. CT scan showed a left posterolateral herniated nucleus pulposus (HNP) at L4-5 with possible caudal migration of fragment. He underwent back rehabilitation . Two years later, L4-5 discectomy was performed. Repeat surgery was required, although this is not entirely clear from the record. It is unclear if the patient improved after his second surgery, and what his current clinical status is.

3. Summary and Recommendations: The record clearly indicates the patient had back pain after 13 days of recruit training. The clinical impression at that time would not lead to the diagnosis of an HNP. The majority of patients presenting similar to [REDACTED] would be expected to improve with nonoperative, conservative treatment. It is unclear to me whether true EPTE existed or not. This hinges on the documentation of LT Ortiz on 03 July 1986. Clinically, it is possible after the 1979 MVA for the patient to have had episode of back pain, but he denies this, and offers the support of this personal physician to this effect. If he did not ultimately improve after his second disc surgery, then this would also call into question whether a clinically significant disc was present. Boden, et. al., J Bone and Joint Surgery, demonstrated that MRI findings must be interpreted in light of clinical presentation, and up to 50% of "normal " patients may have MRI "discs."

From the record, I cannot with absolute certainty, determine if this patient did or did not have preexisting back complaints. Two physicians provide opposing contradictory documentation. The patient states his back pain began in recruit training. The medical care provided during the active duty period appears to have been appropriate, and within standard clinical practice.

Because of the uncertainty of the issues, pursuant to the records provided for my review, the petitioner's request for a retroactive PEB from the date of his discharge should be re-explored. Further interview and clarification from LT Ortiz could help address the issues.

Very respectfully

CDR Glen Ross MC USN