



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

JRE  
Docket No: 7647-96  
13 April 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 8 April 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 the Director, Naval Council of Personnel Boards dated 11 February 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. 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

copy To:

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c. Neither his 19 January and 25 May 1983 MEBs indicate a TDRL-grade disability; it may well have been that it was a sense of uncertainty regarding the possibility of a smoldering more overtly life-threatening etiology that induced the, then, Central PEB to rate Petitioner in such a way as to place him on the TDRL. Petitioner's record suggest a PEB finding that may have looked something like this:

I

- |  |   |           |        |
|--|---|-----------|--------|
| 1. CHRONIC URTICARIA AND ANGIOEDEMA    | ] | 7899-7118 | 20%    |
| ASSOCIATED WITH ARTHRALGIAS, MYALGIAS, | ] |           |        |
| BRONCHOSPASM AND HYPOCOMPLEMENTEMIA    | ] |           |        |
| BUT NO FRANK VASCULITIS.               | ] |           |        |
| 2. DUODENAL ULCER DISEASE, CHRONIC     | ] | 7399-7305 | 10%    |
|  |   |           | 28=30% |
|  |   |           | TDRL   |

III

3. RECURRENT HEADACHES AND SYNCOPE-ETIOLOGY NOT DEFINED BUT POSSIBLE DUE TO HISTAMINE RELEASE AND COMPATIBLE WITH IDIOPATHIC ANAPHYLAXIS SYNDROME.
7. PPD CONVERSION SINCE AUG 82, UNDER TREATMENT
8. INTERNAL HEMORRHOIDS-STABLE
9. SITUATIONAL DEPRESSION

d. Department of Veterans Affairs (DVA) records strongly suggest that Petitioner was able to sustain a labor intensive work history, at least until well into 1995 when he suffered a right anterior chest injury at work while **"having to move a concrete finishing machine weighing 500 pounds up two sleds into his truck..."** {cf., 26 December 1995 HCA Gulf Coast Hospital record}

e. On 21 October 1988, Petitioner's TDRL evaluation basically indicated that his clinical picture had remained unchanged; unfortunately, it does not mention TDRL occupational adjustment--though currently available DVA records suggest adequate functioning as noted above.

f. A more recent DVA record {29 April 1996} suggests the possibility of symptom exaggeration or, at least, diminished compliance with recommendations. It indicates "he continues to have periods of melena and claims the last episode...was three

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weeks ago. However, he never brings a stool specimen in to his physician for testing and it is not clear to me that these are really truly melanotic stools."

4. Based on our review, it appears the PEB placed Petitioner on the TDRL at 30%. Petitioner's contention that he had been on the TDRL (and rated) at 50% probably represents a misinterpretation based on the fact that, by law, the minimum pay received by members placed on the TDRL is 50% of base pay.

5. Subsequent to Petitioner's last periodic evaluation, the PEB acted properly by reducing Petitioner's rating. Incidentally, this is in conformity with the much later DVA assessments of Petitioner's disability for the period in question, beginning with its 18 September 1986 Rating Decision.

6. In regards to the discrepancy between the VA and PEB findings, the fact that a service member's medical condition was not determined to be a physical disability requiring separation or retirement has nothing to do with the VA's jurisdiction over a case. In fact it should be noted that, as long as the VA determines a condition (for which the VA is currently evaluating the veteran) to be service-connected, the VA can delete, add or change diagnoses made by the Service. The VA can also increase or decrease the disability percentage rating as the condition worsens or improves. On the other hand, the determination made by the PEB, acting under Title 10 U.S. Code Chapter 61, reflects the member's condition only at the time of the member's separation.

7. The Petitioner's records and documentation support the conclusion that he was properly awarded a disability rating of 20 percent for his medical condition at time of discharge. I find no evidence of prejudice, unfairness, or impropriety in the adjudication of Petitioner's case, and therefore recommend that his petition be denied.

  
R. S. MELTON