



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 6536-97

29 June 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 20 May 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.

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 rationale of the hearing panel of the Physical Evaluation Board which considered your case on 10 April 1997, the determination of the Judge Advocate General of 30 May 1997 that the findings of the Physical Evaluation Board were not legally objectionable, and the denial of your Petition for Relief from Final Action by Director, Naval Council of Personnel Boards. A copy of the hearing panel's rationale is enclosed. As the Board was not persuaded that you were unfit for duty, it did not address the issue concerning the proper code for rating your condition, nor did it attempt to relate the symptoms of your condition to the rating criteria contained in the VA Schedule for Rating Disabilities.

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

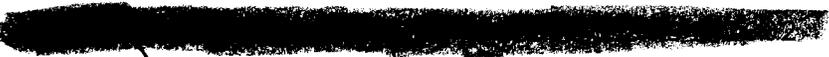
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noted the member's fatigue where it said "his intermittent debilitating fatigue is intense enough that he fully believes this will significantly impact on his ability to adequately function on board ship deployment." However, the physical examination reported in that medical board again noted "no demonstrable hepatosplenomegaly" and "no other stigmata of chronic liver disease noted on further exam." The member also has maintained his weight in the 210 to 220 pound range. It can be fairly said that the member's appearance at the Hearing Panel showed him again to be "quite robust and healthy" in appearance. The latest liver function tests were dated 30 January 1997 and showed a distinct improvement over the liver function tests reported in the medical board of August 1992. Specifically, the AST(SGOT) was 70 and the ALT(SGPT) was 130, which represent a significant functional improvement compared with the previous studies. This is not necessarily the equivalent of a cure or healing of the member's liver, but certainly is a demonstration of improved function and decreased inflammation.

The member presents with a subjective complaint of severe fatigue that he claims has substantially interfered with his ability to carry out his duties. However, this is not substantiated by the documentary medical record which shows no visits for his GI complaints and no complaints of significant fatigue until his medical board itself. Furthermore, the member's complaints of fatigue have not significantly interfered with his ability to carry out the duties of his rank and rate as reflected in his fitness reports. The member testified to some distinction between his performance and his stamina, but the issue is, in fact, his performance.

The Standard Form 600 entry of 20 February 1997 is also significant because it refutes the diagnosis of chronic fatigue syndrome for which the Record Review Panel rated the member. The member also stated that he does not have chronic fatigue syndrome. The Standard Form 600 entry of 20 February 1997 reports the member's complaints of fatigue, which as noted have not been substantiated in his fitness reports or his documented medical record. That Standard Form 600 entry also reports the member's complaints of right upper quadrant pain, which again are not substantiated with his medical record.

In evaluating any individual, it is of paramount importance to remember that the mere presence of a diagnosis is not synonymous with disability. It must be established that the medical disease or condition underlying the diagnosis actually interferes significantly with the member's ability to carry out the duties of his rank and rate. In the instant case, the objective data are quite clear. The liver function tests reported show a chronic minimal rise in the member's liver enzyme over several years, but which have improved since his previous medical board in 1992. Moreover, the member still has none of the stigmata of chronic liver disease and he has carried out the duties of his rank and rate, not only adequately, but well enough to receive both a Navy Achievement Medal and a Navy



Commendation Medal. Therefore, after careful consideration of all relevant medical evidence, the Hearing Panel finds the member fit for continued naval service.