



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 5906-97

21 May 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 13 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. In addition, the Board considered the advisory opinion furnished by a designee of the Specialty Advisor for Orthopedic Surgery dated 7 April and 8 May 1998, and the Director, Naval Council of Personnel Boards dated 23 March 1999. A copy of each opinion 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 from the Director, Naval Council of Personnel Boards. 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,

ROBERT D. ZSALMAN
Acting Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
BUILDING 36 WASHINGTON NAVY YARD
901 M STREET SE
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420
Ser: 99-029
23 Mar 99

From: Director, Naval Council of Personnel Boards
To: Chairman, Board for Correction of Naval Records

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER
[REDACTED]

Ref: (a) BCNR ltr JRE DN: 5906-97 dated 30 Jun 98
(b) SECNAVINST 1850.4C
(c) CMDR [REDACTED] Orthopaedic Traumatologist, Naval Hospital, Camp Pendleton, CA ltr 1070 04G dated 7 Apr 98


1. This responds to reference (a) for comments and recommendation regarding Petitioner's request to show that she was retired by reason of physical disability. The Petitioner contends she was unfit for duty prior to her discharge because of conditions of the left hip, right shoulder, and left sacroiliac joint, as well as left sciatic neuritis, sinusitis and excision of a lump. **We have determined that Petitioner's medical records do not support a medical disability retirement.**

2. Reference (a) incorrectly reports Petitioner's enlistment date as "16 January 1994"; her correct enlistment date is "17 January 1990". The Petitioner's case history and medical records have been thoroughly reviewed in accordance with reference (b) and are returned. The following comments as well as our recommendation are provided below.

3. On 18 October 1993, the Petitioner completed a thorough separation physical examination and was found "Qualified for separation pending ENT follow-up".

4. The BUMED Orthopedic Specialty Advisor comments contained in reference (c) concluded that "There is no objective data to support left hip fracture, leg length inequality, rotator cuff tear, or left sciatic neuritis" but recommended that "her record be corrected to reflect the following orthopaedic diagnoses:"


- 1) Left hip pain, surgically treated, DNEPTE.
- 2) Right shoulder rotator cuff tendinitis, DNEPTE.
- 3) Left sciatic pain/strain, DNEPTE

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER


5. There is insufficient evidence in Petitioner's health record that would provide an abiding severity of pathology or frequency of health care utilization as to justify a retrospective finding of 'UNFIT' for any of the conditions later rated by the Department of Veterans Affairs (DVA).

6. The fact that a service member's medical condition was not determined to be a physical disability has nothing to do with the DVA's jurisdiction over a case. In fact it should be noted that, as long as the DVA determines a condition (for which the DVA is currently evaluating the veteran) to be service-connected, the DVA can delete, add or change diagnoses made by the Service. The DVA can also increase or decrease the disability percentage rating as the condition worsens or improves. On the other hand, our determination, acting under Title 10 U.S. Code Chapter 61, reflects the member's condition only at the time of the member's separation. In this case, the DVA rating is based on several conditions the DVA has determined to be service-connected, but are not considered disabling with regard to active military service.

7. In summary, Petitioner's records and documentation support the conclusion that she was properly separated. The Petitioner was 'FIT FOR DUTY' at the time of her release from active duty on 16 January 1994. I find no evidence of prejudice, unfairness, or impropriety in the adjudication of Petitioner's case, and therefore recommend that her petition be denied.



NAVAL HOSPITAL
DEPARTMENT OF ORTHOPAEDICS
BOX 555191
CAMP PENDLETON, CALIFORNIA 92055-5191

1070
04G
8 May 98

From: [REDACTED] CDR, MC, USN
To: Chairman, Board for Correction of Naval Records
Board for Correction of Naval Records
2 Navy Annex
Washington, DC 20370-5100
Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED]

Ref: (a) Department of the Navy Board for Correction of Naval
Records ltr Docket No. 5906-97, dtd 6 May 98
(b) CDR [REDACTED] ltr of response dtd 7 Apr 98
(c) Department of the Navy Board for Correction of Naval
Records ltr Docket #5906-97 dtd 7 Jan 98

1. In response to reference (a), the following are my additional comments.

2. Reference (c) did not specifically ask for fitness for release from active duty which is sought in reference (a).

3. Please refer to my recommendation for diagnoses modifications (additions and deletions) in reference (b), paragraphs 7 and 8. In my opinion, [REDACTED] certainly could have been released from active duty from an orthopaedic viewpoint if she was on a full duty status prior to separation. If, on the other hand, she was on modified duty status as a result of her orthopaedic diagnoses and able to perform her full duties, and/or complete a physical fitness test secondary to her orthopaedic diagnoses, her EAOS could have been medically extended by initiation of Limited Duty Board to allow further evaluation and treatment, if indicated, for her orthopaedic diagnoses. If recommended treatment for these conditions did not allow for return to full duty, or if she refused further medical treatment for her orthopaedic complaint, the case could then be referred to Physical Evaluation Board for further disposition.

[REDACTED]

NAVAL HOSPITAL
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1070
04G
7 Apr 98

FROM: CDR [REDACTED], Orthopaedic Traumatologist,
Diplomate of American Board of Orthopaedic Surgery
ICG: Chairman, Board for Collection of Naval Records
via: CAPT [REDACTED] MC, USNR, Specialty Advisor for
Orthopaedics, HPO1 Boone Road, Code 04, Naval Hospital,
Bremerton, WA 98312

SUBJ: COMMENTS AND RECOMMENDATIONS ICG [REDACTED]
[REDACTED]

REF: (a) Department of the Navy Board for Correction of
Naval Records Docket #5505-91, dtd 7 Jan 98

ENCH: (1) DCNR file
(2) Service Record
(3) VA Records/Medical Records

1. In response to reference (a), I thoroughly reviewed enclosures (1) and (3), and the following are my comments/recommendations.
2. During softball game while on active duty, subject sustained left hip injury August 1991. The clinical impression was left hip subluxation/dislocation - spontaneously reduced as no x-ray/bone scan/or MRI, identified actual fracture. Subject complained of left buttock pain March 1991 which precedes onset of left hip pain.
3. Subject underwent left hip arthroscopy 3/15/96 - reported as normal, with postop diagnosis "left hip pain of unknown etiology". Subject also underwent left iliopsoas tendon lengthening in July 1996.
4. Radiographic reports - left shoulder (2/17/95), lumbar spine (1/10/95, 2/17/95), chest (2/17/95), cervical spine (2/17/95), right shoulder (6/17/94), and left hip (6/17/94, 2/17/95, and 11/8/96) all reported negative, (normal).
5. A compensation and pension evaluation on 5/20/97, stated "there does not appear to be any functional limitation of the left hip/leg.
6. An orthopaedic evaluation 1 July 1993, left sacroiliac pain, (radiographs with sacroiliac joint osteophytes).

Subj: COMMENTS AND RECOMMENDATIONS ICO FORMER [REDACTED]

7. I recommend her record be corrected to reflect the following orthopaedic diagnoses:

- 1) Left hip pain, surgically treated, did not exist prior to enlistment.
- 2) Right shoulder rotator cuff tendinitis, did not exist prior to enlistment.
- 3) Left sciatic pain/strain, did not exist prior to enlistment.

8. There is no objective data to support left hip fracture, leg length inequality, rotator cuff tear, or left sciatic neuritis; therefore, it is recommended that these diagnoses be dropped and not utilized for disability determination.

[REDACTED]