



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

JRE  
Docket No: 800-01  
6 December 2001

[REDACTED]

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 November 2001. 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 Director, Naval Council of Personnel Boards dated 3 May 2001, 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



DEPARTMENT OF THE NAVY  
NAVAL COUNCIL OF PERSONNEL BOARDS  
WASHINGTON NAVY YARD  
720 KENNON STREET SE RM 309  
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420  
Ser: 01-18  
3 May 01

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

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE OF  
[REDACTED]

Ref: (a) Your ltr JRE:jdh Docket No: 00800-01 of 27 Mar 01  
(b) SECNAVINST 1850.4D


1. This letter responds to reference (a) which requested comments and a recommendation regarding Petitioner's request for correction of his records. On 1 May 1995, the Petitioner was discharged from the U.S. Navy and placed on the TDRL. The Petitioner believes he should have received a disability rating of 50% instead of the 30% he received when he was transferred to the Permanent Disability Retired List (PDRL).

2. The Petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments are provided:

a. On 1 May 1995, the Petitioner was found unfit and placed on the TDRL with a disability rating of 60% for a severe aortic insufficiency. On 8 May 2000, the Petitioner was transferred from the TDRL to the PDRL. His disability rating was reduced from 60% to 30%. He accepted the findings and did not request a formal board.

b. Title 10, Chapter 61, requires that the Physical Evaluation Board employ the rating criteria in effect at the time of finalization of TDRL status. In January 1998, subsequent to the Petitioner's placement on the TDRL, the Department of Veterans Affairs (DVA) revised the rating criteria for cardiovascular conditions. In the absence of evidence of endocarditis or recent episodes of congestive heart failure, the 1998 criteria turn largely on either ejection fraction reduction or the degree of endurance impairment. The latter is measured in metabolic units (METS) during activity with endurance defined as that effort which results in significant distress (as evidenced by dyspnea, fatigue, angina, dizziness, or syncope). Neither the 1 February 2001 TDRL Examination nor the records enclosed with this BCNR application contain such data. However, the activity tolerance history submitted suggests relatively little current functional impairment despite the poor structural integrity of the Petitioner's aortic valve.

c. Notwithstanding the clinical recommendation for aortic valve replacement, in the absence of any contemporary ejection fraction or METs/Endurance measurement data indicating greater functional impairment, the disability rating options are still limited to 30% or less.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE OF  


3. In summary, there is insufficient evidence of significant functional impairment. Based upon the DVA rules and regulations at the time the Petitioner's TDRL status was finalized, the assigned PDRL disability rating of 30% was appropriate. It is strongly recommended that Petitioner submit any missing data demonstrating functional impairment.

  
Director