



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

JRE  
Docket No: 2924-00  
18 June 2001



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 7 June 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 the Director, Naval Council of Personnel Boards dated 5 February 2001, a copy of which is attached, and the rebuttal information submitted by your counsel.

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. It was not persuaded that your condition was ratable at more than 50% disabling at the time of your permanent retirement from the Navy. 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: 00-27  
5 Feb 01

From: Director, Naval Council of Personnel Boards  
To: Executive Director, Board of Correction for Naval Records  
Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER  
[REDACTED]

Ref: (a) Chairman, BCNR JRE: jdhd DN: 2924-00 ltr of 25 Oct 00  
(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 to grant him a disability rating of 100%. He was discharged on 31 October 1994. We have determined the evidence in this case does not support the petitioner's request for a change of records.

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

a. On 5 August 1993, a medical board diagnosed Lieutenant [REDACTED] with Demyelinating Disease and Bilateral Lower Extremity Numbness Transverse Myelitis. The Board recommended he be found unfit for further service.

b. On 6 December 1993, an Informal Board recommended he be placed on the TDRL with a disability rating of 30%.

c. On 31 May 1994, the member appeared before a formal board and requested to be found unfit at a rating of 70%. The formal board found him to be unfit with a disability rating of 70% based on demyelinating disease, bilateral lower extremity numbness transverse myelitis and major depression episode. On 3 August 1994, the PEB issued a disability rating of 70% and placed him on the TRDL.

d. On 13 February 1996, the VA rated Lieutenant [REDACTED] at 80% for the same disabilities.

e. On 27 November 1996, the RRP rated Lieutenant [REDACTED] at 30% and returned him to the TDRL.

f. On 23 March 1998, the VA reviewed Lieutenant [REDACTED] case and rated him at 100% disability based upon weakness and numbness, voiding dysfunction, lack of coordination and slurred speech due to multiple sclerosis, and major depressive disorder.


g. On 14 December 1999, the RRP awarded Lieutenant [REDACTED] a disability rating of 50% based on Demyelinating Disease, bilateral lower extremity numbness transverse myelitis and major depression episode.

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h. On 31 January 2000, the member was found unfit and placed on the PDRL with a 50% disability rating.

i. The difference between the 23 March 1998 VA disability rating and the 31 January 2000 PEB finding is likely the product of 15 months of time separating the physical examinations.

j. The service member accepted the findings of the RRP and did not challenge them by appearing before a formal board.

3. In summary, the service member accepted the findings of the RRP and did not challenge them by appearing before a formal board. Per reference (b), this resulted in finalization of the disability rating. Accordingly, the petitioner's request should be denied. Should there be additional medical evidence circa the 1999 time frame that would suggest the PEB determination did not reflect the overall ongoing functional impairment of Lieutenant  this should be submitted for consideration.

