



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

JRE
Docket No: 8040-99
29 January 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 25 January 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 a designee of the Specialty Leader for Orthopedic Surgery, dated 24 December 2000, a copy of which is attached, and your response thereto.

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 unable to conclude that you were unfit by reason of physical disability at the time of your discharge from the Marine Corps. 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



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24 Dec 00

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From: Director Orthopaedic Spine Service and Department Chairman
 Naval Medical Center San Diego CA 92134-5000
 To: Chairman, Board for Correction of Naval Records
 VIA: Captain Dana Covey, Specialty Advisor for Orthopaedics
 Subj: [REDACTED] [Docket No 8040-99]
 Machinegunner, Infantry

1. I have personally prepared this report after reviewing (in depth) the records forwarded in the case of former [REDACTED] including the VA documentation and medical-dental records during the SNM's period of active duty.
2. [REDACTED] requested via DDF 149, dated 02 December 1999 that his record be changed "to a medical discharge and retire;" and that he was "in a light duty status 2 years prior to discharge because of my back. I refused surgery for my back and neck. I should have been retired." Because of the VA documentation and [REDACTED] statement "because of my back," this review only addresses the back and neck.
3. The following notations refer to extractions from the medical record:
 - From his discharge history and physical 17 April 1996: the patient reports "my back hurts off and on—still have back spasms." The doctor noted, "1 year s/p motor vehicle injury, chronic LBP and HA+ whiplash injury.
 - A patient DDF 2697 entry by the patient: Back and neck pain—can't carry a full pack on my back—to heavy and (can't) carry a machinegun
 - From 12 Sept 1995 88/93 he checked positive for recurrent back pain. The doctor annotated, " S/P MVA-Jan 95—c/o continued backpain, headaches and neck pain—continues traction with physical therapy and ortho (treatment)."
 - 18 Jan 1995: F/U after MVA from 14 January 1995, rear-ended—twice—complained of neck pain and tingling; mentioned mid and low back pain. Treated with light duty, medications and heat.
 - TAMC ER 25 January 1995: Arrived by ambulance "1 week post MVA" with primary complaint of headache for which he received a CT scan. Mentioned was LBP since MVA. Treated with Flexeril, Motrin and light duty.
 - July 95: Physical therapy. Mentions paraspinal bulges, cervical and lumbar. Seen 10 July for headache and neck stiffness. "I don't have the pain in my left arm and shoulder anymore" Treated with SIQ and medication. 12 July was seen by physical medicine consultant for trunk and neck pain; notes that MRI showed multiple herniated discs. Diagnosis was myofascial pain syndrome. Treatment was strengthening, aerobic conditioning and Elavil.
 - Earlier notes: 1988 F/U at NHCamp LJ -LBP/strain after a fall onto his back.



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Subj: [REDACTED]

Machinegunner, Infantry

- 8/88 Back sprain treated at NavCare after falling onto back
- July 1980—Lumbar pain and stomach pain
- 3 Dec 1990—reported back spasm from auto accident occurring Sept 3rd. Civilian care by physical therapy for “mechanical LBP” treated with medication and requested report from civilian ortho (no report seen)
- 17 Sept 1990 “hit from behind” in MVA” complaining of headache, backache and “shoulder pain”
- 4. Regarding the 17 April 1996 history and physical, [REDACTED] found the SNM qualified for discharge on his final physical examination. This was despite the patient’s note about not being able to carry his full pack or machine gun and stating, “my back hurts off and on and still have back spasms”
- 5. Follow-up: Apparently, the patient went on to have back surgery, fusion after leaving the USMC and difficulty or inability to return to his job as a letter carrier in the early post-operative period. This was apparently for sciatica, although none of those records were provided.
- 6. **Conclusions and Opinion:**
 - It is highly unlikely that a PEB would have found [REDACTED] unfit at the time of his discharge physical examination, based on the available record and with exclusive focus on the low back pain or neck pain complaints.
 - However, with consideration of back pain, severe headaches, neck pain, ankle and knee pain, wrist pain and his other problems, it is difficult to conclude that he was fit and able to do his duties as a machine gunner in the infantry. On the other hand, his doctors in September, 1995 and April, 1996 found him fit to re-enlist and for discharge, respectively, these with doctor and patient notes acknowledging the back pain problem.
 - Given the course of events, with worsening of back problem, development of sciatica (not mentioned in the records I reviewed), he clearly would not have been able to complete a 20-year career. If progression of disease and eventual outcome are to be considered, rather than his symptoms, record and complaints at the time of discharge, his request is reasonable.
 - There is no doubt that the record substantiates the claim of service connectivity and significant level of low back complaints. If the patient had included records of his outside evaluations and MRI (presumably done in response to his MVA and possibly to litigation) more could be said about his level of symptoms and/or disability at the time of discharge from the USMC. The record acknowledges a moderate level of symptoms at the time of discharge. The final outcome was of increasing symptoms and eventual incapacity requiring spinal fusion.

[REDACTED]

Chairman, Orthopaedics
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