



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

JRE
Docket No: 8366-00
23 October 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 12 October 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.

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 1 August 2000, a copy of which is attached. 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

[REDACTED]

RATIONALE:

THE MEMBER IS A 33 YEAR OLD TM2, USN(RET) WITH ABOUT 9 YEARS OF SERVICE AT THE TIME HE WAS PLACED ON THE TDRL ON 15 SEPTEMBER 1995 WITH DISABILITY RATINGS OF 10% UNDER V.A. CODE 5299-5276(B) (EPTE, SERVICE AGGRAVATED), 10% UNDER V.A. CODE 5299-5003(L), AND 10% UNDER V.A. CODE 5299-5003(B), FOR A TOTAL RATING OF 27% ROUNDED TO 30% FOR THE DIAGNOSES:

- (1) RIGID PES VALGOPLANUS FOOT TYPE WITH LATERAL IMPINGEMENT SYNDROME;
- (2) LEFT SHOULDER IMPINGEMENT CHRONIC; AND
- (4) LEFT KNEE PATELLOFEMORAL SYNDROME WITH EARLY DEGENERATIVE OSTEOARTHRITIS OF THE PATELLOFEMORAL JOINT.

AN ADDITIONAL DIAGNOSIS THAT WAS CONSIDERED A CATEGORY III CONDITION WAS:

- (3) MECHANICAL LOW BACK PAIN CHRONIC.

THE MEMBER UNDERWENT TDRL EVALUATIONS 16 JUNE 1999 AND 11 APRIL 2000 AT THE NATIONAL NAVAL MEDICAL CENTER. THE INFORMAL PEB CONSIDERED THE CASE ON 4 MAY 2000 AND FOUND THE MEMBER UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY BASED ON DIAGNOSES 2 AND 4 ABOVE AND RATABLE AT 10% UNDER V.A. CODE 5299-5003 AND 10% UNDER CODE 5299-5003 FOR A TOTAL RATING OF 20%. DIAGNOSES 1 AND 3 WERE CONSIDERED CATEGORY III CONDITIONS. THE MEMBER DISAGREED WITH THIS FINDING AND DEMANDED A FORMAL HEARING.

A FORMAL HEARING WAS CONDUCTED ON 01 AUGUST, 2000 AT BETHESDA, MARYLAND WITH [REDACTED] AS PRESIDING OFFICER, [REDACTED] USMC, AND [REDACTED], AS PANEL MEMBERS. THE MEMBER WAS REPRESENTED BY LIEUTENANT J. W. WEBER, III, JAGC, USNR.

THE MEMBER APPEARED AT THE HEARING REQUESTING TO BE FOUND UNFIT FOR DUTY WITH DISABILITY RATINGS OF 20% UNDER V.A. CODE 5299-5003 AND 10% UNDER V.A. CODE 5299-5276(B) FOR A TOTAL RATING OF 30% AND PLACEMENT ON THE PDRL. TO SUPPORT HIS REQUEST THE MEMBER PRESENTED TESTIMONY AND COPIES OF HIS V.A. TREATMENT RECORDS.

AFTER CAREFUL REVIEW OF ALL THE AVAILABLE EVIDENCE AND BASED ON UNANIMOUS OPINION, THE FORMAL PEB FINDS THE MEMBER REMAINS UNFIT FOR DUTY IN THE U.S. NAVY BECAUSE OF PHYSICAL DISABILITY. THE RECORD DOCUMENTS THAT THE MEMBER HAD CHRONIC LEFT SHOULDER, KNEE, AND FOOT PAIN THAT LIMITED HIS ACTIVITIES DUE TO THE ABOVE DIAGNOSES. THE TDRL EVALUATION INDICATES THAT SINCE PLACEMENT ON THE TDRL THE MEMBER HAS UNDERGONE A LEFT ROTATOR CUFF REPAIR IN OCTOBER 1998 BUT CONTINUES TO HAVE CHRONIC SHOULDER PAIN. IT ALSO INDICATES HE CONTINUES TO HAVE CHRONIC BILATERAL KNEE PAIN. BOTH OF THESE LIMIT

HIS ACTIVITIES AND WOULD INTERFERE WITH THE ADEQUATE PERFORMANCE OF REQUIRED MILITARY DUTIES. ALTHOUGH THE REPORT INDICATES THE MEMBER'S FOOT SYMPTOMS ARE CONTROLLED WITH SHOE WEAR MODIFICATION, THE MEMBER WOULD NOT BE ABLE TO RETURN TO MILITARY FOOT WEAR WITHOUT RETURN OF SYMPTOMS. THEREFORE, THE PES VALGOPLANUS IS ALSO CONSIDERED UNFITTING FOR DUTY.

THE TDRL REPORT INDICATES EXAM SHOWS FULL RANGE OF MOTION IN THE LEFT SHOULDER AND THE KNEES BUT WITH TENDERNESS TO PALPATION OVER THE LEFT ANTERAIOR SHOULDER SURGICAL SCAR AND THE ANTERIOR DELTOID FIBERS AS WELL AS 4/5 WEAKNESS OF THE SUPRASPINATUS MUSCLE. ALSO, THERE WAS CREPITUS IN THE KNEES, RIGHT GREATER THAN LEFT, AND POSITIVE PATELLAR GRIND BILATERALLY. PREVIOUS X-RAYS HAD BEEN REPORTED TO SHOW PATELLAR OSTEOPHYTES IN THE LEFT KNEE CONSISTENT WITH EARLY DEGENERATIVE CHANGES OF THE PATELLOFEMORAL JOINT AND A TYPE II ACROMION IN THE LEFT SHOULDER. THESE FINDINGS WITH EPISODES OF INCAPACITATION WARRANT THE 20% RATING UNDER V.A. CODE 5299-5003.

ALTHOUGH THE MEMBER WOULD NOT BE ABLE TO TOLERATE MILITARY FOOT WEAR DUE TO HIS FLAT FEET, THE TDRL EVALUATION INDICATES THIS DOES NOT APPEAR TO AFFECT HIS GAIT IN ANY WAY. ALTHOUGH THE MEMBER CLAIMED THAT THE FOOT CONDITION CONTINUED TO CAUSE ANKLE PROBLEMS, HIS TESTIMONY INDICATED HE CURRENTLY WORKS 45 TO 55 HOURS PER WEEK AS A RECRUITER FOR A TECHNICAL TRAINING INSTITUTE THAT REQUIRES STANDING 4 TO 6 HOURS AT A TIME TWO TO THREE TIMES A MONTH FOR CAR SHOWS. THE MEMBER DOES NOT REQUIRE ANY AMBULATORY ASSISTIVE DEVICES. THEREFORE, THE PES VALGOPLANUS IS CONSIDERED TO WARRANT ONLY A 0% RATING UNDER V.A. CODE 5276(B).

THE ABOVE RATINGS COMBINE TO 20%.

ALTHOUGH THE LOWER BACK PAIN HAS WORSENERED, THIS WAS CONSIDERED A CATEGORY III CONDITION AT THE TIME THE MEMBER WAS PLACED ON THE TDRL. THERE WAS NO EVIDENCE PRESENTED TO CHANGE THAT CATEGORIZATION NOW. THEREFORE, DIAGNOSIS 3 REMAINS A CATEGORY III CONDITION.


CAPT.  USNR, PRESIDING

15 Aug '00
DATE


COL L.  USMC, PANEL

15 Aug '00
DATE


CAPT L.  MC, USN, PANEL

15 Aug 00
DATE