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

JRE
Docket No: 1631-02
7 October 2002

[redacted]

[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 19 September 2002. 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 16 November 2000, a copy of which is attached. The Board was not persuaded that you were unfit for duty at that time, or that you became unfit prior to your release from active duty on 7 Febraury 2002. It concluded that your failure to be found physically qualified for sea duty was insufficient to demonstrate that you were unfit for further service. 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

SAN DIEGO FORMAL HEARING RATIONALE
IN THE CASE OF [redacted]

A medical board was held at Naval Hospital Corpus Christi, TX on 15 June 2000 with the following diagnoses:

1. Cubital carpal tunnel syndrome with bilateral numbness(3540)
2. Cervical spondylosis with myelopathy (7211)
3. Musculoskeletal low back pain (7242)
4. Thoracic or lumbosacral neuritis or radiculitis, unspecified(7244)
5. Unequal leg length (acquired) (73681)

The Informal Physical Evaluation Board found the member unfit for duty with 20% disability rating on 31 August 2000 under:

CAT I: 1. Musculoskeletal low back pain with negative MRI and CT Myelogram with left radicular findings (7242) VA Code 5295 with 10% disability;

2. Status post anterior cervical diskectomy and fusion to C5-C6 interval and C6-C7 interval VA Code 5290 with 10% disability

CAT III 3. Status post cubital tunnel release with no change in Symptomatology

4. Leg length discrepancy(73681)

This member appeared before the Formal PEB on 16 November 2000 requesting to be found unfit for duty with 40% disability rating and placement on TDRL.

Accepted documentary evidence consisted of:

Exhibit A - PEB Case File
Exhibit B - [redacted] letter of 06 NOV 2000
Exhibit C - [redacted] letter of 08 NOV 2000
Exhibit D - Additional Medical Evidence
Exhibit E - Performance Evaluations
Exhibit F - Additional Medical Evidence

The member's medical board of 15 June 2000 makes multiple diagnoses as listed supra. The member is asking for ratings for two conditions. She wishes a rating for limitation of motion in her cervical spine and a rating for low back pain. These will be addressed seriatim.

With regard to the member's complaint of limitation of motion in her neck, the medical board focuses on her neck surgery. The member was first evaluated in June 1998 for complaints of neck pain with radicular

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symptoms in the ulnar distribution along both hands. Her initial x-rays showed some degenerative changes at C5-C6 and C6-C7. An MRI showed herniated disks and arthritic changes with nerve root encroachment in that area. The member eventually was referred for cervical diskectomy and fusion of the C5-C6 and C6-C7 levels in early 2000. At the time of the medical board, she was noted to have good healing with allograft bone. The physical examination in the medical board indicated that her bilateral upper extremities revealed negative Spurling and Lhermitte signs. Her reflexes were symmetric and within normal limits. The member complained of decreased sensation, right greater than left in the ulnar nerve distribution in her hands. She had some weakness in the ulnar nerve in the right being 4/5+ and the left being 5/5+. The remainder of her motor exam was intact at 5/5+. There's no report of any muscle asymmetry or muscle wasting in the ulnar nerve distribution. There were no reports of abnormal EMGS in the record.

The member was wearing a cervical collar and said she has been wearing this since 1998. However there's no indication in the medical board that she needs to be wearing this cervical collar. Additional medical evidence in the form of a June 30th 2000 note from her private orthopod indicates that the member's repeat MRI was noted to be normal as read both by the orthopod and a radiologist. The orthopod closed by saying that he felt the member had some residual "myofascial" pain but offered no indication of any other abnormality.

The member complained of some muscle spasms in her shoulders, but these are not documented in any recent notes or additional medical evidence contained in Exhibit F. The member offered no assertions of how the range of motion in her neck would significantly interfere with her ability to carry out the duties of her rate. When asked about the difficulty of working as an IC on a ship, the member said she couldn't pull cables with her arms over her head because of pain, but there was no reference to any problem with range of motion in her neck. Moreover, the physical examination of the member's upper extremities does not indicate any significant weakness or even any other radiculopathy with pain complaint referable to the member's neck. All the information with regard to the member's neck suggests that she has had very successful cervical surgery. The first mention of any measure of range of motion is in Exhibit F in a hand written note of 25 October 2000. The medical board simply notes that the member had limited range of motion in her neck. But there's no suggestion that this limitation of motion in any way significantly interferes with the member's ability to carry out the duties of her rank and rate.

With respect to the member's low back pain, the medical board diagnosis is "musculoskeletal low back pain with negative MRI and CT myelogram with left radicular findings". In fact, the member has a subjective complaint of pain with absolutely no objective data to support it. The physical examination of the member's lower extremities contained in the medical board notes only a leg length discrepancy of approximately 1.5 to 2 cm. The straight leg raise was reported as negative bilaterally. The motor

exam was 5/5+ in all motor groups, sensation intact to light touch to all dermatomal distributions, and reflexes 2/4+ and symmetric. The member claimed that she needed to walk with a cane, but there's nothing in the medical board to suggest why she would need to walk with a cane. The member also complained of subjective pain in her low back which she said it made her difficult for her to sit for long periods of time. The member has been on 4-hour duty for the last two years, but there's no substantiation in the medical board about why the member cannot work for 8 hours. The member offered no assertion of why she could not carry out the duties of her rank and rate as an IC because of her low back pain. Her job does not require prolonged sitting. The member stated that she would have difficulty lifting things because of her cane, but her cane is not indicated anywhere in the medical record as being necessary. The member said that she is "not viable in the office", but this is not supported by her performance evaluation which indicates that she has been doing adequate job while working in an office environment.

In sum, the member wants ratings for decreased range of motion in her neck, but offered no evidence that the range of motion in her neck would significantly interfere with duties. The member proclaimed dramatic complaints of pain in various parts of her body, but wishes a rating specifically for her back. However, the objective data do not support any organic cause of the member's subjective complaints of pain. The member is walking with a cane, but there's no evidence in the medical board that she needs to walk.with a cane. The member's dramatic pain complaints are out of proportion to any objective data in the medical record. Additionally, the member had several other diagnoses including carpal tunnel syndrome with bilateral numbness which has been reviewed carefully by the Formal Board and not found to be a separately unfitting condition. The member has a diagnosis of cervical spondylosis with myelopathy, but there's no evidence that this currently exists since her surgery. The member also has a diagnosis of thoracic or lumbosacral neuritis or radiculitis unspecified but there's no indication that is a separately unfitting condition. The member is noted to have unequal leg length, but there's no indication that this is separately unfitting condition. Therefore after careful consideration of all relevant medical evidence, the Formal Board finds that the member is fit for continued naval service.

Reviewed and authenticated by:

[redacted] USN, PRESIDING OFFICER — 25 JAN 01 DATE

[redacted], USN, MEDICAL OFFICER — 25 Jan 01 DATE

CAPT [redacted] USNR, LINE OFFICER — 1/25/01 DATE

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