



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

JRE
Docket No: 4922-00
16 March 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected to show that she was retired by reason of physical disability.
2. The Board, consisting of Mses. Davies and Humberd, reviewed Petitioner's allegations of error and injustice on 8 March 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
 - c. Petitioner entered on active duty in the Navy on 28 March 1992. She appeared before medical boards on 11 March 1998 for bilateral knee pain and chondromalacia patellae; 15 September 1998 for gynecological conditions; and on 20 October 1998, for bilateral knee arthritis with the left side greater than the right, and total knee arthroplasty on the left side. The narrative of the third board indicates Petitioner had been active in sports in earlier years (prior to entering on active duty), and had a history of low grade injuries to her knees, but "nothing of significant magnitude." She had trouble with her right knee beginning in 1992 during Officer Indoctrination School, when she first noted swelling and pain in that joint. She underwent arthroscopy of the knee during September 1992, and was noted to have significant arthritic changes in all three compartments of the knee joint. About a year later,

her left knee began to bother her, which she attributed to favoring the right leg. She participated in physical therapy and took non-steroidal anti-inflammatory medications, but did not achieve significant improvement. She underwent arthroscopy of the left knee, with lateral retinacular release during February 1994, and was noted to have grade III chondromalacia of the medial femoral condyle, medial tibial plateau and the patellofemoral joint as well. After recovering from several complications of that surgery, and sustaining a fall, she had sporadic knee problems in both knees, with pain and swelling which significantly limited her activities. The left knee became the more symptomatic joint, and she underwent a second arthroscopy of that knee, on 12 February 1998, consisting of chondroplasty of the femoral trochlea, patella and medial femoral condyle. Due to continued pain and the severe arthritis in that knee, she underwent a total knee replacement on 4 June 1998, and manipulation of the knee under anesthesia on 28 August 1998. Ultimately, a range of motion of approximately 3 to 100 degrees was achieved, with severe pain. As it was felt that the requirements of protecting the joint to allow greater longevity would preclude her from most of the duties she would be required to perform as a Navy officer and nurse, she was referred to the Physical Evaluation Board (PEB) for a determination of her fitness for duty.

d. On 8 December 1998, the PEB made preliminary findings that the left knee arthroplasty rendered Petitioner unfit for duty, and that it was ratable at 30%, less a 10% existed prior to service (EPTS) factor, for a final rating of 20%. The bilateral arthritis was classified in category II, as a condition that contributed to the unfitting condition, but did not warrant a separate rating. The gynecological conditions were not considered unfitting or ratable. Petitioner accepted those findings on 21 December 1998, and she was discharged with entitlement to disability severance pay on 31 January 1999.

e. SECNAVINST 1850.4C, paragraph 2110, provided, in effect, that in cases involving aggravation by active service, it is necessary to deduct from the present degree of disability the degree of disability existing at the time of entrance into active service, if ascertainable. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the rating schedule, no deduction will be made.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner should have been retired by reason of physical disability. In this regard, it notes that although it is likely that degenerative processes existed in both of Petitioner's knees before she entered the Navy, she did not have significant difficulty with her left knee until she had completed approximately eighteen months of active duty service. The Board concludes that given that lengthy symptom-free period, the determination that there was a 10% degree of disability in her left knee when she entered the Navy is unjust. Accordingly, it finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

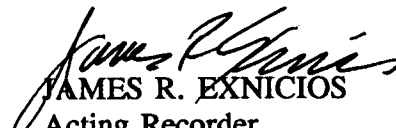
a. That Petitioner's naval record be corrected to show that she was not discharged from the Navy on 31 January 1999.

b. That Petitioner's naval record be further corrected to show that on 31 January 1999, while she was entitled to receive basic pay, the Secretary of the Navy found her unfit to perform the duties of by reason of physical disability due to total left knee arthroplasty, which was incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number: 5299-5003-5055; and that accepted medical principles indicate the disability is of a permanent nature, the Secretary directed that Petitioner be permanently retired by reason of physical disability effective 1 February 1999 pursuant to 10 U.S. Code 1201.

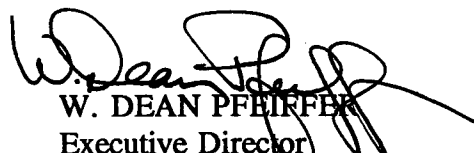
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director