



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

JRE  
Docket No: 5183-99  
5 February 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 1 February 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 22 October 1998, a copy of which is attached. The fact that you were diagnosed as suffering from post traumatic stress disorder was not considered probative of error or injustice, because you have not demonstrated that you were unfit for duty because of that or any other condition at the time of your discharge. It noted that an individual may suffer from a personality disorder and post traumatic stress disorder simultaneously. In your case, you were found unsuitable for military service because of a personality disorder, rather than unfit for duty because of post traumatic stress disorder. 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 HEARING PANEL RATIONALE  
IN THE CASE OF

[REDACTED], USN, [REDACTED]

A medical board was held at NAVMEDCEN, San Diego, California on 14 January 1998 with diagnoses of:

1. Chronic Low Back Pain (7242)
2. Chronic Neck Pain (7231)

The Record Review Panel found the member fit for duty on 17 July 1998.

This member appeared before the Panel on 22 October 1998 requesting to be found unfit for duty under VA Code 5025 and 9434, rated at 0% disability and separation with severance pay.

Accepted documentary evidence consisted of:

- Exhibit A - PEB Case File
- Exhibit B - Additional Medical Evidence
- Exhibit C - Service Record Entries
- Exhibit D - Memo from [REDACTED], MSC, USN, dtd 21 Oct 98
- Exhibit E - PRT Folder

A medical board of 8 August 1997 lists diagnoses of low back pain and whiplash syndrome secondary to two motor vehicle accidents and notes that litigation was pending at that time. There is another medical board of 14 January 1998 which lists diagnoses of chronic low back pain and chronic neck pain. Since that medical board, the member has been involved in another accident, this one while boating.

There are several entries in the PEB case file that are labeled medical board addenda, but they are not because they have not been vetted through the chain of command.

Among these "addenda" is a note from Lieutenant [REDACTED] MC, USNR, staff rheumatologist, dated 8/12/98. Dr. Demarco states that he believes the member meets the criteria for fibromyalgia, but he does not elucidate. He notes that the United States Navy is "getting nominal remuneration", whatever that means, for the member's work. He states that she requires an intensive exercise regimen as well as psychological counseling to continue to provide sub-optimal performance. However, the question is not whether the member's performance is "sub-optimal", but rather whether her performance meets required Navy standards.

There is a 31 July 1998 psych "addendum" that lists three diagnoses. The first is major depression, which is actually poorly documented, and has little in the way of objective data to support it. The member also carries the diagnosis of PTSD apparently secondary to her several motor vehicles accidents, but this is also rather poorly documented. The

Enclosure (1)

[REDACTED]

member then has a diagnosis of borderline personality disorder, which is fairly well documented and certainly explains much of her behavior. The summary of the "addendum" notes the member to be minimally physically and psychologically functional, but again the issue is performance.

The member's performance is reported in the nonmedical assessment dated 25 March 1998, which suggests that the member is performing adequately in duties consistent with her rank and rate. Exhibit C contains performance evaluations up through July 1997, which reflect that the member has always performed at or above standard. The member testified that she had a more recent evaluation covering the last six months and the member's counsel simply stated that he could not "get a hold" of that performance evaluation without further explanation.

In evaluating any individual, it is of paramount importance to remember that the mere presence of a diagnosis is not synonymous with disability. It must be established that the medical disease or condition underlying the diagnosis actually interferes significantly with the member's ability to carry out the duties of her rank and rate. The performance standard for evaluating a member's fitness is Navy-wide. The standard is not an idiosyncratic, subjective standard tailored to each individual. The issue is not whether the individual is one hundred percent of some previous level of performance, but rather whether the member meets the minimum Navy standards of performance. In the instant case, the member has had multiple motor vehicle accidents, behavioral problems, and psychological problems. However, there were inadequate data offered to suggest that the member is currently unable to perform the duties of her rank and rate. Therefore, after careful consideration of all relevant medical evidence, the Hearing Panel finds the member fit for continued naval service.

Enclosure (1)