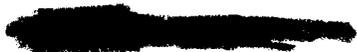




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 6771-01
9 July 2002



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 6 June 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. In addition, the Board considered the advisory opinion furnished by the Neurology Specialty Leader, Naval Medical Center, Portsmouth, Virginia, dated 22 January 2002, a copy of which is attached, and the information submitted by your parents and your counsel in 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 not persuaded that you were unfit for duty because of a physical disability which was incurred in or aggravated by your brief period of service.

The Board noted that your enlistment was fraudulent, in that you failed to disclose significant aspects of your medical history which would have disqualified you from enlisting. You concealed your past history of paroxysmal dystonia, which you first developed at age 3 or 4, and was thought to be secondary to birth hypoxia. In addition, you did not disclose that you had required braces to walk, and that your exercise tolerance had decreased over the years preceding your enlistment. The fact that you were found physically qualified for enlistment is of little significance, because your fraud prevented medical personnel from accurately assessing your fitness for military service. It is notable, however, that based on observation alone, the physician who conducted your pre-enlistment physical examination was concerned about your neurologic and orthopedic fitness for enlistment, and recommended specialist

consultations. The results of those consultations were not available to the Board. In addition, the Board noted that your signature on enlistment documents appears to indicate that you had a significant tremor in your major arm which adversely affected your ability to write legibly.

With regard to the issue of the relationship between your dystonia and the prophylactic medication you were prescribed because of a positive tuberculin skin test, the Board noted that the standard of care for young, well nourished, non-alcoholic, otherwise healthy individuals, such as military recruits, does not mandate that persons taking INH also be prescribed vitamin B-6. Although it is possible that you would have been prescribed vitamin B-6 had you disclosed your history of neurological disorders, or perhaps even been prescribed another prophylactic medication, your failure to disclose pertinent medical history precluded informed decisions concerning appropriate medical care. The Board concluded that the adverse health effects associated with your taking INH, if any, are attributable to your own misconduct. The Board noted, however, that the evidence submitted in support of your application concerning the effects of INH on your neurological status is equivocal. For example, Dr. McClean's report, dated 16 July 2001, indicates that the INH probably was not contributing to your symptoms. The statement of Drs. Feiler and Bey of 11 July 2001, indicates that differential explanations for the onset of your symptoms were INH induced, versus systemic disorders or overexertion unmasking your underlying hereditary abnormality.

The Board noted that although your twin brother's neurological disorder was not symptomatic to the same extent that yours was when you arrived home following your discharge, he was discharged, as your father states, at the same time and "under similar circumstances", i.e., because of a preexisting condition or defect which was below minimum physical standards for enlistment. It is interesting to note that at age 10, he developed symptoms very similar to those you had following your discharge from the Navy, namely slurred speech and progressive weakness to the point that he had almost no muscle function. There is no indication that he took INH before the onset of those symptoms.

In view of the foregoing, 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,

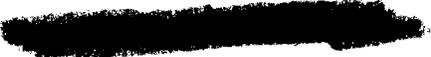
W. DEAN PFEIFFER
Executive Director

Enclosure

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22 JAN 02

To: Chairman, Board for Corrections of Naval Records

Subj: REPLY TO REQUEST FOR COMMENTS ICO: 


Encl: (a) BCNR File
(b) Service Record

1. Enclosures (a) and (b) were thoroughly reviewed. This review relates to the SNM contesting that his USN discharge should be changed to "medical, with a service-related disability" from a general discharge.
2. The nature of the patient's condition and the past medical history clearly delineate a pre-existing condition that would have been present prior to the SNM's entry into the USN.  in his letter dated 1 AUG 01 relates that the SNM suffers from a "mitochondrial disorder". Though he is not specific as to the exact type of disorder, the history and exam would be consistent with a condition in this general grouping.
3. My recommendation is that the SNM's discharge should remain classified as it is ("general"), and that there is no evidence of service-related medical disability that would warrant a change of classification.

Sincerely,
