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

JRE
Docket No: 7861-97
21 May 1999

[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 13 may 1999. 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 Director, Naval Council of Personnel Boards dated 22 February 1999, a copy of which is attached.

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. 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

DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
BUILDING 36 WASHINGTON NAVY YARD
901 M STREET SE
WASHINGTON, DC 20374-5023

IN REPLY REFER TO
5420
Ser: 99-018
22 Feb 99

From: Director, Naval Council of Personnel Boards
To: Chairman, Board for Correction of Naval Records

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER
[redacted]

Ref: (a) BCNR ltr JRE DN: 7861-97 dated 3 June 98
(b) SECNAVINST 1850.4C

1. This responds to reference (a) for information to show whether or not Petitioner's discharge should be changed to a medical retirement vice discharge with severance pay. **We have determined that the Petitioner's request warrants no change to the Record Review Panel's (RRP) findings.**

2. The Petitioner's case history and medical records have been thoroughly reviewed in accordance with reference (b) and are returned. The following comments as well as our recommendation are provided below.

3. A synopsis from Petitioner's Medical Evaluation Board (MEB) provides the following information: "long history of bilateral activity related anterior knee pain as well as right worse than left wrist pain, clicking and giving way...followed in the Orthopedic Surgery Clinic for several years...right wrist...MRI...as well as arthrogaphy...EMG and nerve conduction velocities...right upper extremity...consistent with a TFCC tear of the right wrist and mid carpal instability...neurologic studies were within normal limits. ...3 April 1995...symptomatic mid carpal instability as well as chondromalacia...point of the hamate and laxity of the triquetral hamate captitate ligament and a central detachment of the right triangular fibrocartilage complex...rehabilitation program post op...went on to regain significant...range of motion but has continued pain...right worse than left...unable to do pull-ups, push-ups or any kind of lifting because of his anterior knee pain and he has pain with running and humping and any strenuous activity...71 inches...196 pounds. {WRIST EXAMINATION SHOWS} full range of motion...dorsiflexion limited to 75 degrees and palmar flexion to 75 degrees bilaterally with pain at the extremes of range of motion... symptomatic instability with clicking in both mid carpal joints...full range of motion of hips, knees and ankles bilaterally. No significant quadriceps

atrophy…crepitus and diffuse tenderness of both patellofemoral joints. No ligamentous laxity."

4. At the time of Petitioner's adjudication, his wrist condition appears to have been both primarily orthopedic--vice neurologic {normal studies}--in nature and with mild objective manifestations of impairment {e.g., range of motion little impaired despite pain}. As such it did not meet the "cutting score" to invoke the VASRDs "wrist" rating codes; hence, the appropriate reliance on code 5003.

5. Petitioner's knee condition is considered a unitary or systemic arthritic condition causing "crepitus and tenderness" and affecting both knees. The previously mentioned Army-service-related unilateral/left knee injury had "no residual disability" and subsequent unilaterally distinguishing significant injuries/residuals are absent. Therefore, it is appropriate, again, to rely on the 5003 code, vice a separate rating for each knee. Again, the objective indicators of impaired function are fairly mild.

6. The mere presence of a clinical manifestation or condition for which a rating exists, or can be found, in the VASRD, does not translate automatically into a separate finding of unfitness for that condition. The fact that a service member's medical condition was not determined to be a physical disability has nothing to do with the VA's jurisdiction over a case. In fact it should be noted that, as long as the VA determines a condition (for which the VA is currently evaluating the veteran) to be service-connected, the VA can delete, add or change diagnoses made by the Service. The VA can also increase or decrease the disability percentage rating as the condition worsens or improves. On the other hand, the determination made by the PEB, acting under Title 10 U.S. Code Chapter 61, reflects the member's condition only at the time of the member's separation. In this case, the VA rating is based on several conditions the VA has determined to be service-connected, but which were determined by the PEB to be not disabling with regard to active military service.

7. The Petitioner's records and documentation support the conclusion that he was properly awarded a disability rating of 20 percent. He was afforded every right of appeal to which he

was entitled following the finding of the Physical Evaluation Board's RRP; however, the Petitioner stated in writing that he accepted the finding of 20 percent disability. I find no evidence of prejudice, unfairness, or impropriety in the adjudication of Petitioner's case, and therefore recommend that his petition be denied.

R. S. MELTON