



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

JRE
Docket No: 7307-97
6 April 1999

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 w/attachments
(2) NCPB ltr 5420 Ser:99-11, 8 Feb 98
(3) 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 granted a hearing before the Physical Evaluation Board (PEB), and that she was permanently by reason of physical disability.
2. The Board, consisting of Mses. Humberd and Moidel and Mr. Lippolis, reviewed Petitioner's allegations of error and injustice on 18 March 1999 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 was released from active duty on 8 December 1992, and transferred to the Temporary Disability Retired List (TDRL) with a 30% rating for short segment Crohn's colitis. A related condition, perianal fistulous Crohn's disease, was classified as a category II condition, i.e., one which contributed to the unfitting condition, but was not separately unfitting or ratable. She completed 11 years, 7 months and 29 days of active duty service. On 3 March 1994, the Department of Veterans Affairs (VA) awarded Petitioner ratings of 10% for Crohn's disease and major depression, for a combined rating of 20% effective 9 December 1992. On 13 April 1995, the VA added a rating of 60% for anal fistulae, with

impairment of control of anal sphincter, based on the results of an examination conducted on 8 November 1994, which show that she was incontinent of stool and had no voluntary contraction of the anal sphincter. The report of a VA examination conducted on 30 October 1995 indicates that she still had no voluntary sphincter control, and had to wear disposable undergarments because of persistent rectal incontinence. She was evaluated at a Naval medical facility on 12 March 1997. A handwritten report of the examination indicates that she had been incontinent since fistula surgery/sphincterectomy (prior to her release from active duty). In the examiner's opinion, Petitioner had had flares of colitis which were fairly easily managed, and that there was good control between flares. He recommended that she be "transferred to PDRL". The formal report of examination, dated 14 March 1997, is silent concerning the issue of incontinence, but indicates that Petitioner had "good sphincter tone". The authors of the latter report recommended that she be permanently retired. On 6 June 1997, the Record Review Panel of the PEB made preliminary findings that she remained unfit for duty, and that the short segment Crohn's colitis was ratable at 10%. Petitioner signed for the notification of PEB findings on 30 June 1997. Although she demanded a formal hearing, her election of options form was not received by the PEB until 12 August 1997, which exceeded the 15 day time-limit for making an election; accordingly, on 8 September 1997, she was advised that the course of action available to her at that time (to contest the findings of the PEB) was to apply to this Board.

d. Petitioner contends, in effect, that her colitis got worse during her tenure on the TDRL. She was found incontinent by the VA on two occasions, and she has frequent mishaps, such as having bowel movements in her underpants, because of her inability to control her bowel movements. She maintains that she requires protection (against leakage and/or involuntary bowel movements). She contends that she received the findings of the PEB on 30 June 1997, and returned her election form, in which she demanded a hearing, on 1 July 1997. She does not understand why it took one and one half months for her letter to be received by the PEB. In addition, she contends that she should have been given a rating for major depression, but was not because the PEB did not consider an addendum to her medical board report which addressed that condition.

e. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards (NCPB) advised the Board, in effect, that Petitioner does not warrant a formal hearing before the PEB because her election of options was not submitted in a timely manner. He noted that the VA finding of no voluntary contraction of the anal sphincter is in dramatic contradistinction to the later Naval Medical Center San Diego Gastrointestinal Clinic finding on 12 March 1997 of "good sphincter tone". Assuming both examinations were accurate, the most likely explanation is clinical improvement over the intervening approximately three-year period on the TDRL. In the absence of documented evidence of anal sphincter incompetence at or about the time of Petitioner's 1997 TDRL processing, there would have been no material change in the findings of the PEB concerning the Crohn's disease and related condition had she been accorded a hearing. With regard to the issue of major depression, the Director, NCPB, is of the opinion that the depression was not an unfitting condition; however, had the medical board addendum been received in a timely manner, it is likely the depression would have been added as a category II condition. He recommended that her record be corrected to reflect such a finding and, in effect, that her

request for disability retirement be denied.

f. Rating guidance for VA code 7332, impairment of sphincter control, provides for ratings of 100% for complete loss of control; 60% for extensive leakage and fairly frequent involuntary bowel movements; 30% for occasional involuntary bowel movements, necessitating wearing of pad; and ratings of 10% and 0% for lesser or no leakage, respectively.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (2), the Board concludes that Petitioner should have been permanently retired by reason of physical disability due to her Crohn's disease, with loss of sphincter control. In this regard, it notes that the VA found evidence of incontinence on two occasions, in 1994 and 1995, and that the physician who conducted her final Navy physical examination on 12 March 1997 also noted that she had been incontinent. The fact that incontinence was not mentioned in the formal report of the 12 March 1997 examination, and that she was found to have "good rectal tone" were considered insufficient to demonstrate that she had good sphincter control and was not incontinent, at least on occasion. Based on her description of the loss of control, the Board concludes it rendered her unfit for duty, and that a 30% rating is warranted for that condition.

In view of the foregoing, the Board 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 by reason of physical disability.

b. That Petitioner's naval record be further corrected to show that the Secretary of the Navy found her unfit to perform the duties of her rate by reason of physical disability due to short segment Crohn's colitis, rated at 10% under VA code 7323, and impairment of anal sphincter control, rated at 30% under VA code 7332, for a combined rating of 40%; that she suffered from a category II condition, major depression, which was not separately ratable; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that Petitioner has completed over eight years of active service; and that accepted medical principles indicate the disability is of a permanent nature, accordingly, the Secretary directed that Petitioner be permanently retired by reason of physical disability effective 8 December 1997, pursuant to 10 U.S. Code 1201.

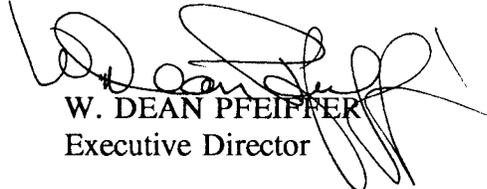
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. 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. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved: JUN 18 1999



KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)