



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

JRE
Docket No: 6525-02
25 November 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 21 November 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.

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 15 July 1999, a copy of which is attached. The Board noted that unlike, the Department of Veterans Affairs, which rates all conditions incurred in or aggravated by military service, regardless of degree, the military departments are permitted to rate only those conditions which render the service member unfit to perform the duties of his office, grade, rank or rating. As you have not demonstrated that you were unfit for duty, the Board was unable to recommend any corrective action in your case. 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

SAN DIEGO FORMAL PEB RATIONALE
IN THE CASE OF
[REDACTED]

A medical board was held at Naval Hospital, Jacksonville, Florida on 15 January 1999 with the following diagnosis:

1. Low Back Pain (7242)
2. Patellofemoral Pain Syndrome

The informal Physical Evaluation Board found the member fit for duty on 05 April 1999.

This member appeared before the formal PEB on 15 July 1999 requesting to be found unfit for duty under VA Codes 7900 (hyperthyroidism) at 10%, 5257 (bilateral knees) at 10%, 5250 (hip ankylosis) at 10%, and 5295 (lumbosacral strain) at 20% for a total of 40% disability and placed on the TDRL.

Accepted documentary evidence consisted of:

- Exhibit A - PEB Case File
- Exhibit B - Additional Medical Information
- Exhibit C - Performance Evaluations
- Exhibit D - PRT Data
- Exhibit E - Ltr from [REDACTED] DC, dated 10 Jun 99
- Exhibit F - Ltr from [REDACTED] (supervisor) undated

The member's medical board of 15 January 1999 reports a primary diagnosis of low back pain and a secondary diagnosis of patellofemoral syndrome bilateral. The past medical history in the medical board notes that the member had a history of hyperthyroidism which is treated with Synthroid. The member appeared before the formal board requesting ratings for his low back pain, his hyperthyroidism, his patellofemoral syndrome, and hip ankylosis. There is no where in the medical record or the medical board or the PEB case file that a diagnosis of hip ankylosis is made. These complaints will be address seriatum.

With reference to the member's hyperthyroidism, he testified this was diagnosed in March 1998. He attributes his hyperthyroidism to an auto accident he had in 1997. However, that is no where suggested in the medical record. In any case, the member has been stable on a dose of 0.05 mcg of Synthroid for approximately the past 17 months. The member testified that a [REDACTED] a disability counselor, told him that taking Synthroid was an unfitting condition. The member in no way asserted that he was unfit for continued Naval service because he was taking Synthroid. In fact, taking Synthroid is not in itself an unfitting condition.

The member also requested to be rated for ankylosis of the hip. He testified that his last treatment for this was on 30 June 1999, but that note is not in the record. He says it was his routine visit to his chiropractor for manipulation. Exhibit B contains additional medical

Enclosure (1)

[REDACTED]

evidence of visits since the medical board. There are several visits there to his chiropractor for manipulation of his spine. In none of these visits does the chiropractor mention a diagnosis of hip ankylosis. There is a reference to one leg being shorter than the other by a half an inch. However, there are no measurements offered demonstrating that this is a fixed leg length differential and not simply tilting of the pelvis. Further, there are no X-rays of the member's hips suggesting that he in fact has an ankylosis. Finally, the medical board physical examination does not suggest that there is a decreased range of motion in the member's hips. Thus, there was no evidence offered that the member even has the diagnosis of hip ankylosis or, stipulating that he has the diagnosis, that it is a separately unfitting condition.

With regard to the member's complaint of patellofemoral syndrome, this was originally diagnosed in 1993. There is no mention of it again until August 1998. The member was then referred for physical therapy, but there is no record of follow-up until February 1999. In the interim between 1993 and February 1999, there is no evidence that the member sought treatment for his patellofemoral syndrome. Furthermore, there is no evidence that the member lost any time from work because of his knee complaints. The member reports that there are some records in physical therapy which were kept there and are not in his medical record. However, even stipulating that such records exist, the member made no assertion of anything he specifically cannot do because of his knee pain. In the medical board there are reports of knee X-rays that were within normal limits and there is a report of a normal bone scan. Thus, there was inadequate evidence offered that the member has patellofemoral syndrome or that it is a separately unfitting condition.

With regard to the member's low back pain, the medical record reports the member's complaints of low back pain with occasional radiation into his right lower extremity. However, there are no reports of MRI's that were done and showing any abnormality. There are no reports of any abnormal CAT scans. There are no reports of any abnormal X-rays. The physical examination notes no evidence of lateralizing signs such as abnormalities in the deep tendon reflexes. There is no evidence of muscle wasting or asymmetry. In the member's testimony, he mentioned that he goes to his chiropractor regularly for manipulation. The chiropractor notes that the member does come for manipulation, but there is no evidence of any objective abnormalities in the member's low back.

In passing, it must be noted that the member also was noted to have a history of migraines, but on 23 June 1999 the member had a neurologic evaluation that found him fit for duty neurologically after evaluating these headaches (Exhibit B).

Exhibit C contains the member's performance evaluations. The most recent evaluation covers the period from March 1998 to March 1999. This

Enclosure (1)

[REDACTED]

evaluation notes the member performing at or above standards in all categories and overall rates him as must promote. Furthermore, the member received a Navy Achievement Medal during this period for his outstanding performance. Moreover, the member was recommended for conversion to the SK rate because of his outstanding performance. The member testified that he was also working as a Red Cross CPR instructor during this performance period and instructed both in his civilian community and for his command.

In sum, the member has 20 different diagnoses according to his letter to the PEB dated 22 April 1999 (list of diagnoses attached to that letter). The member's medical board was for two diagnoses, low back pain and patellofemoral pain syndrome only. The member appeared before the formal board asking for ratings on four diagnoses. Remarkably, one of these diagnoses, hip ankylosis, appears no where in the member's medical record, PEB case file, or even in his letter to the PEB dated 22 April 1999. The member has been on stable treatment for his hyperthyroidism with Synthroid for approximately 17 months. The member complains of subjective low back pain without objective evidence of neuromuscular dysfunction. The member complains of bilateral knee pain with normal X-rays, normal bone scan, and only three visits to medical recorded since 1993. The member has failed body fat weight standards five times and is also a Level III treatment failure for weight control. The member testified that his maximum allowed weight is 188 pounds. The member's weight on his separations physical of 26 January 1999 was 192 pounds and the member testified that his weight at the time of the formal board was 246 pounds. Finally, the member's performance evaluations are uniformly outstanding, indicating that he has always carried out his duties well above minimum Navy standards.

In evaluating any individual, it is of paramount importance to remember that the mere presence of a diagnosis is not synonymous with disability. In the instant case, the member has a 20 "diagnoses" and four for which he asks ratings. However, the record is unequivocally clear that the member has always performed well above required Navy standards. Finally, the member appeared at the formal board wearing bilateral arm braces for his carpal tunnel syndrome. This was diagnosed in 1993 and the member has received no subsequent treatment. However, he says he was told to wear the braces whenever his carpal tunnel syndrome acted up and his wrists were hurting him this morning.

Therefore, after careful consideration of all relevant medical evidence, the formal board finds the member fit for continued Naval service.

Enclosure (1)