



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

JRE
Docket No: 1278-01
19 June 2001

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
(2) 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 his naval record be corrected to show that he was retired under the Temporary Early Retirement Authority (TERA), vice discharged by reason of physical disability.
2. The Board, consisting of Messrs. Adams, Goldsmith and Schultz, reviewed Petitioner's allegations of error and injustice on 24 May 2001 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 18 April 1995, and transferred to the TDRL with a 30% rating for a heart condition. The 30% rating was the minimum permissible rating for his condition prescribed by the VA Schedule for Rating Disabilities (VASRD) at that time. He completed 17 years, 7 months and 25 days of active duty service. Prior to being transferred to the TDRL, he was notified that should he be removed from the TDRL in the future by reason of his rating falling below 30% , he "may be entitled to elect either retirement under TERA" or separation with severance pay. On 10 December 1998, the Physical Evaluation Board (PEB) determined that his condition was ratable at 10% under

the revised VASRD then in effect. That rating was ultimately approved for the Secretary of the Navy, and Petitioner was discharged with entitlement to disability severance pay effective 19 July 1999.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that, in view of Petitioner's extensive period of creditable active duty service, and the advice he was given prior to his transfer to the TDRL concerning possible entitlement to retire under the provisions of TERA should his rating fall below 30%, the Board finds it would be in the interest of justice to grant his request.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged from the Navy on 19 July 1999.

b. That Petitioner's naval record be further corrected to show that his name was retained on the Temporary Disability Retired List until 31 July 1999, and that he was transferred to the Fleet Reserve on 1 August 1999, pursuant to the Temporary Early Retirement Authority.

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

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


FOR W. DEAN PFEIFFER
Executive Director