



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

JRE
Docket No: 5440-00
15 October 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 discharged under honorable conditions by reason of physical disability, and that the indebtedness he incurred as a result of his discharge, for repayment of his selective reenlistment bonus, be excused.

2. The Board, consisting of Messrs. Adams, Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 20 September 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 enlisted in the Navy on 28 December 1992. He received nonjudicial punishment on 9 January 1997 for drunk driving. The punishment consisted of a suspended reduction to grade E-3, restriction and extra duties for thirty days, and forfeiture of \$300.00 per month for two months. He was absent without authority from 27 April to 17 August 1998. In a letter dated 31 August 1998, the Commander, Naval Medical Center, Portsmouth, advised Petitioner's commanding officer, in effect, that Petitioner was unsuitable for military service because of a severe personality disorder, and that Petitioner was a

continuing danger to himself and others. He noted that Petitioner's psychiatrist had recommended that Petitioner be expeditiously administratively discharged from the Navy. On 1 October 1998, Petitioner received nonjudicial punishment for the aforementioned absence. The punishment included restriction and extra duties for 45 days. On 7 October 1998, while deployed on the USS Roosevelt (CVN 71), Petitioner was advised that he was being processed for administrative separation for convenience of the government due to a personality disorder; misconduct due to a pattern of misconduct; and misconduct due to the commission of a serious offense. On 10 October 1998, Petitioner waived his rights to consult with counsel and to appear before an administrative discharge board. The discharge authority approved a discharge by reason of misconduct/pattern of misconduct, and directed that Petitioner be discharged with a discharge under other than honorable conditions. Petitioner was discharged in accordance with that directive on 5 November 1998.

CONCLUSION:

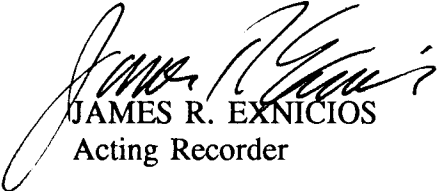
Upon review and consideration of all the evidence of record, the Board concludes that Petitioner failed to submit sufficient relevant evidence to demonstrate that his discharge by reason of misconduct/pattern of misconduct was erroneous, or that he was unfit for duty by reason of physical disability at that time. It notes that a personality disorder is not considered to be a disability under the laws administered by the Department of the Navy. In addition, he would not have been eligible for disability evaluation processing even if he had suffered from an unfitting condition, because misconduct separation processing takes precedence over disability evaluations. Accordingly, there is no basis for changing the reason and authority for his discharge, or recommending that he be excused from repaying the unearned portion of his reenlistment bonus. Notwithstanding the foregoing, the Board concludes that the characterization of Petitioner's service with a discharge under other than honorable conditions is unjust. In this regard, it notes that he performed well during the majority of his enlistment, and that the unauthorized absence with which led to the initiation of discharge processing was significantly mitigated by his personality disorder and the related psychological stress he was under at that time. Accordingly, and after resolving reasonable doubt in Petitioner's favor, the Board concludes that it would be in the interest of justice to grant the following corrective action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was discharged by reason of misconduct/pattern of misconduct 5 November 1998 with a discharge under honorable condition, vice the discharge under other than honorable conditions he actually received on that date.
- b. That so much of Petitioner application as exceeds the foregoing be denied.
- 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