



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

JRE
Docket No. 10333-05
23 March 2007

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 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 the applicable naval record be corrected to show that he was separated or retired by reason of physical disability.
2. The Board, consisting of Messrs. W. [REDACTED] and [REDACTED] and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 March 2007, 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. Petitioner was referred to the Physical Evaluation Board on 15 August 2005 with a diagnosis chronic non-radiating discogenic pain, postoperative recovery. He had undergone lumbar decompression surgery, with vertebral fusion at the L4-L5 and L5-S1 levels. He limped and used a cane for ambulation, and was unable to perform any exercise without significant back pain. He had not performed his full duties as an aircraft rescue

firefighter since 15 December 2004 because of his spinal condition. On 24 October 2005, the Physical Evaluation Board determined that he was fit for duty, based on the findings that he had full range of motion in his spine, bilateral negative straight leg raise test, and normal strength and sensation in the muscles of his lower extremities, with no objective evidence of spinal disability. He was discharged from the Marine Corps on 28 January 2006, at age 36, by reason of completion of required service, having completed 13 years and 23 days of active service. He was assigned a reentry code of RE-3P, to indicate that he failed to meet physical standards for enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes, after resolving doubt in his favor, that even though Petitioner had full range of motion in his spine, and there was no objective evidence of spinal disability, he was unfit to reasonably perform the duties of his rank by reason of physical disability because of his post-surgical back pain, which precluded him from performing all but the administrative duties of his specialty. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show, as an exception to policy, that he was discharged by reason of physical disability on 28 January 2006, with entitlement to disability severance pay, in accordance with 10 USC 1203, with a 10% rating under Department of Veterans Affairs code 5099-5003, for status/post anterior and posterior lumbar decompression with fusion at L4-L5 and L5-S1.

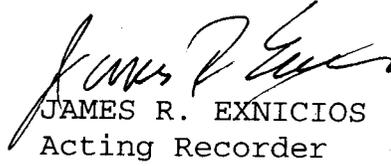
b. That so much of Petitioner's request for corrective action as exceeds the foregoing be denied.

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

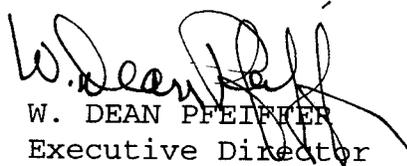
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and

complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. 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.


W. DEAN PFEIFFER
Executive Director