



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

JRE
Docket No. 11031-06
23 January 2008

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 the applicable naval record be corrected to show that his name was not removed from the Temporary Disability Retired List. He contends, in effect, that his custodian did not keep the Marine Corp apprised of his address, which caused him to miss his periodic physical examination, which in turn resulted in the removal of his name from the TDRL.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 13 December 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 released from active duty on 28 February 2001 and transferred to the TDRL with a disability rating of 60% for a severe posttraumatic brain injury secondary to a motor

vehicle accident. On 21 March 2003, the Department of Veterans Affairs (VA) determined that he was incompetent at that time, and awarded him a disability rating of 100% for a traumatic brain injury with mood, cognitive, psychotic and personality disorder. The VA confirmed the finding of incompetency on 10 June 2006. On 16 June 2006 Petitioner was advised by the Commandant of the Marine Corps that his name had been removed from the TDRL and he had been discharged from the Marine Corps effective 1 March 2006 due to his failure to report for his final periodic physical examination.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's failure to appear for his final periodic physical examination is attributable to his mental incompetency, and should be excused. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

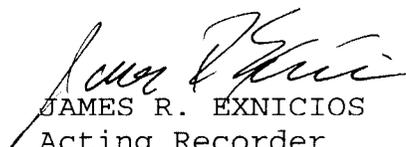
a. That Petitioner's naval record be corrected to show that his name was not removed from the Temporary Disability Retired List and that he was not discharged from the Marine Corps effective 1 March 2006.

b. That he be accorded a periodic physical examination as soon as is practicable. Current address: [REDACTED]
[REDACTED]

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. 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