



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

JRE
Docket No. 08590-07
16 January 2009

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NNMC Behavioral Health Clinic ltr (undated)
(3) SECNAVCORB ltr 5220 CORB:02, 10 Dec 08
(4) 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 her naval record be corrected to show that she was not released from active duty on 30 June 2005. She also requests that she be referred to the Physical Evaluation Board (PEB) for a determination of her fitness for duty. She contends, in effect, that as she was found not physically qualified for separation, she should have been retained on active duty and referred to a physical evaluation board PEB, rather than released from active duty and transferred to the Individual Ready Reserve.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 January 2009 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 Reserve on 22 July 2000 to attend Aviation Officer Candidate School. She was commissioned as an ensign on 20 October 2000. Upon her completion of flight training, she was designated as a naval aviator. During Operation Iraqi Freedom, she flew HH60H and SH60F helicopters on combat and combat support missions. On 24 February 2005, she requested that she be released from flight status. She underwent psychiatric evaluation on 18 March 2005, and disclosed a history of anhedonia (inability to experience pleasure), poor motivation, hypersomnia (excessive sleepiness), weight loss, anxiety about flying, and thoughts of committing suicide while flying. She was diagnosed with depressive disorder not otherwise specified (likely major depression with underlying dysthymic disorder), schizoid traits, and an unspecified occupational disorder. She underwent a pre-separation physical examination on 31 May 2005, which was conducted by a flight surgeon. The flight surgeon made the following entry in item 74a of the report of examination: "Is not qualified for service. NPQ/AA No Waiver". In item 77, Summary of Defects and Diagnoses, he wrote "H/O Major Depression/Social Anxiety txd c Zoloft - CD No waiver rec". He recommended that she follow-up with "Mental Health" as needed, but did not refer her for further evaluation or recommend consideration of her status by a medical board. Petitioner was released from active duty on 30 June 2005 by reason of Secretarial Authority, and transferred to the IRR to complete her remaining military service obligation. On 15 November 2005, the Chief, Bureau of Medicine and Surgery, advised the Commander, Navy Personnel Command, that Petitioner was not physically qualified for active service, promotion, and transfer to or retention in the Ready Reserve or active duty for training, due to depression. Effective 1 July 2005, the Department of Veterans Affairs (VA) awarded Petitioner a disability rating of 30% for major depressive disorder, separate rating of 10% for tinnitus, muscle strain, recurrent urinary tract infection, and temporal mandibular joint dysfunction, and 0% ratings for three other conditions. In a rating decision dated 23 September 2006, the VA changed the diagnosis of the first disability to paranoid schizophrenia, and maintained the 30% disability rating.

d. In correspondence attached as enclosure (2), the Board was advised by a psychiatric reviewer designated by the Specialty Leader for Psychiatry, Bureau of Medicine and Surgery, in effect, that Petitioner was diagnosed with Major Depressive Disorder prior to her release from active duty and should have been referred to the PEB. As her psychosis was documented only

three months after she was released from active duty, it is likely that it emerged even sooner and would have been diagnosed by an active duty psychiatrist had she been accorded a medical board. Her symptoms fit the expected early course of what was ultimately diagnosed schizophrenia, to include depressive symptoms and social anxiety. In addition, she disclosed that her suicidal thoughts had been influenced by psychotic thinking. Given those factors, a diagnosis of "Major Depressive Disorder, Severe, with Psychotic Features", would have been appropriate.

e. In correspondence attached as enclosure (3), the Director, Secretary of the Navy Council of Review Boards, advised the Board, in effect, that the available evidence is insufficient to demonstrate that Petitioner's psychiatric condition adversely affected her duty performance to an extent that would have rendered her unfit for continued naval service had her case been referred to the PEB prior to her release from active duty. The mild Major Depressive Disorder diagnosed while Petitioner was on active duty warranted her removal from flight status; however, even considering the possibility that she was experiencing prodromal symptoms of a psychotic disorder at that time, which she did not disclose, it appears that her documented duty impairment was largely limited to her flying status, as noted in the 18 March 2005 psychiatric evaluation which determined that she was fit, but not for flight status. Although her condition could have resulted in referral to the PEB, regulations provide that the loss of a special qualification, such as occurs when one is disqualified from flying duty, for example, is insufficient to warrant a finding of unfitness by the Department of the Navy PEB. He noted that post-discharge records spanning about a 5-month period suggest that despite symptoms suggestive of a schizophrenic spectrum disorder which levied a toll on her personal life, she was able to maintain employment. The Director concluded that Petitioner had provided insufficient documentation to warrant recommending that her request be granted "due to indications that petitioner was not unfit for continued Naval service despite having been disqualified from flight status." The Director stated that should additional records become available that are "indicative of active duty performance over the last six months of her Naval service", further review of her case would be warranted.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the comments contained in enclosure (3), the Board concludes that Petitioner should have been accorded a

medical board prior to her release from active duty, as indicated by the author of enclosure (2). In addition, after resolving doubt in Petitioner's favor, the Board concludes she was likely experiencing symptoms of a psychotic disorder prior to her release from active duty, and that had those symptoms been disclosed by her, or identified by her mental health care providers, she would have been found unfit for duty by reason of physical disability and transferred to the TDRL. 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 on 30 June 2005, while she was entitled to receive basic pay, the Secretary of the Navy found her unfit to perform the duties of her rank by reason of physical disability due to major depressive disorder, which was incurred while she was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number 9434; and that accepted medical principles indicate the disability may be of a permanent nature, accordingly, the Secretary directed that Petitioner's name be placed on the Temporary Disability Retired List effective 1 July 2005 pursuant to 10 U.S. Code 1202, with a disability rating of 30%.

b. That Petitioner be afforded a periodic physical examination as soon as practicable. Current address:

[REDACTED]

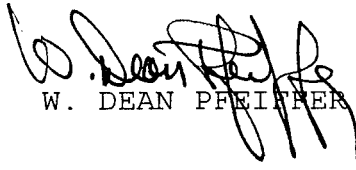
c. That so much of her request for corrective action as exceeds the foregoing be denied.

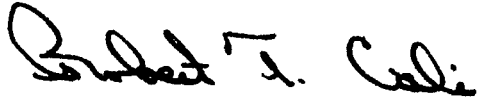
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. Exnicios
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Approved:

2-9-09

Robert T. Call
Assistant General Counsel
(Manpower and Reserve Affairs)