



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

JRE
Docket No. 10316-07
18 April 2008

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

Subj: [REDACTED]
CORRECTION 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 written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected to show that he is entitled to combat-related special compensation (CRSC) for conditions of the lumbar spine, rated by the Department of Veterans Affairs (VA) at 20% under VA code 5293, and left and right bilateral, each rated at 10% under VA code 5003
2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 March 2008, 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 which were available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends, in effect, that his lumbar spine was injured on 4 February 1985 when a structural malfunction caused the fin of a MK-15 Mod 2A bomb to come loose as he was hand loading the bomb on an aircraft, which caused him to twist his body to one side and drop down under the weight of the 500 pound bomb, while trying to prevent the bomb from falling to the ground. He believes that the 1985 injury, together with his subsequent work on carrier flight decks, resulted in the development of bursitis in his hips. Available records indicate that Petitioner complained of lower back pain with radiation to his left hip during February 1985, which was attributed to trauma he sustained while loading a weapon on naval aircraft.

d. Petitioner submitted an application for CRSC to the CRSC Branch, Secretary of the Navy Council of Review Boards, on 20 December 2004. He contended that the lumbar spine condition was incurred on 4 February 1985 while he was loading a weapon on a naval aircraft, and that the bursitis of his hips occurred on 27 March 1999 during "high tempo flight deck operations while deployed to the Gulf region in support of the No Fly Zone". The CRSC Branch denied his request on 27 December 2004, noting that "instrumentality of war combat-related determinations" require a direct causal relationship between the instrumentality and the disability. Falling off, slipping on, running into, tripping over, or attempting to lift an instrumentality of war do not meet CRSC program criteria. In the opinion of the CRSB Branch, he had not demonstrated that the condition of his lumbar spine resulted from the "operation or mishap" of an instrumentality of war. With regard to the bursitis of his hips, the CRSC Branch concluded that he failed to demonstrate that the condition was caused by specific combat-related events.

CONCLUSION:

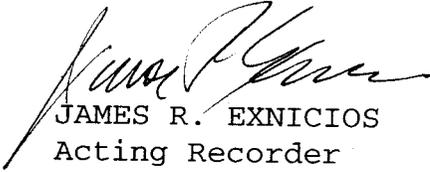
Upon review and consideration of all the evidence of record, the Board concludes that the condition of Petitioner's lumbar spine should be classified as combat-related. In this regard, it finds that the condition occurred on 4 February 1985 when a defect in an instrumentality of war, an MK-15 Mod 2A bomb, caused a "mishap of" the instrumentality, which injured Petitioner as it fell towards the deck. The Board was not persuaded, however, that the bursitis in Petitioner's hips can be attributed to a specific combat-related event.

In view of the foregoing, the Board recommends the following corrective action.

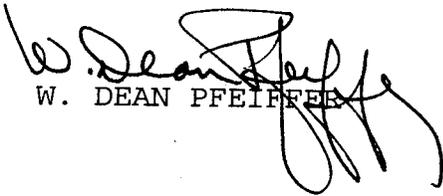
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that the condition of his lumbar spine, which has been rated by the Department of Veterans Affairs (VA) under VA code 5293, is combat-related, and that he is entitled to combat-related special compensation for that condition.
 - b. That so much of Petitioner's request for correction of his naval record as exceeds the foregoing be denied.
 - c. That a copy of this Report of Proceedings be filed at an appropriate location 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. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and Approved: Robert T. Call

5-1-08

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