



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

JRE  
Docket No. 00506-08  
16 December 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 w/attachments  
(2) Intl Med ltr of 20 Aug 08  
(3) SECNAV CORB ltr 5220 CORB:02, 3 Nov 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 his naval record be corrected to show that he was retired by reason of physical disability on 3 January 2006 due to systemic lupus erythematosus (SLE). He contends, in effect, that he became ill with SLE while serving in Iraq in July 2005 and has continued to suffer from that condition until the present time.

2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 December 2008 and, pursuant to its regulations, determined that the partial 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 Marine Corps Reserve (USMCR) on 7 August 2002, and served on initial active duty for training from 7 August 2002 to 1 February 2003. His military occupational specialty (MOS) was 0811, field artillery cannoneer. He was activated on 4 January 2005 and sent to Iraq with his unit, where he served in a billet MOS of 0311, rifleman. During June 2005, he complained of headaches and muscle and joint pain. On 3 July 2005, he was seen by a medical corpsman for continued joint pain and a sore throat, and stated that his symptoms had been occurring two to three times per month for about six months. He was released from active duty on 3 January 2006. On 24 January 2007 he was diagnosed with SLE and related cerebritis with acute seizure activity, nephritis and hemolytic anemia. On 22 June 2007, the Department of Veterans Affairs (VA) granted his request for service connection for a condition of his right shoulder which it rated at 10% from 4 January 2006.

d. On 10 September 2007, the Chief, Bureau of Medicine and Surgery (BUMED) advised the Commanding General, Marine Reserve Forces, that Petitioner was not physically qualified for retention in the USMCR due to lupus. Petitioner was honorably discharged from the USMCR by reason of "involuntary discharge (disability) not in line of duty no misconduct" on 5 October 2007. He was not accorded review of his case by the Physical Evaluation Board (PEB) because of the determination that the SLE was not "service incurred".

e. In a rating decision dated 5 March 2008, VA rating officials determined that "it was more likely than not" that the initial manifestations of SLE occurred while Petitioner was on active duty, and granted his request for service connection for that condition and several related conditions. The SLE was rated at 10% from 4 January 2006; the cerebritis with acute seizure activity, associated with SLE, rated at 100% from 24 January 2007 to 28 February 2007, and thereafter at 10%; and nephritis, anemia, scars on the chest and left heel, and deep vein thrombosis, all associated with the SLE, rated at 0%.

f. In correspondence attached as enclosure (2), the Specialty Leader for Rheumatology of the Bureau of Medicine and Surgery (BUMED), advised the Board, in effect, that there is documentation that Petitioner had unexplained symptoms and an abnormal laboratory finding consistent with SLE while he was on active duty in 2005. Although there is no additional laboratory testing or sophisticated medical evaluation to establish with absolute certainty that Petitioner had active SLE at that time, there is a strong suggestion that he did. Petitioner should

have "had further evaluation for this possibility in 2005 with any subsequent appropriate medical treatment and physical evaluation board necessary prior to his discharge from the service."

g. In correspondence attached as enclosure (3), the Director, Secretary of the Navy Council of Review Boards (SECNAVCORB) advised the Board, in effect, that "awarding benefit of the doubt" to Petitioner, it is likely that the first manifestation of his subsequently diagnosed SLE occurred while he was serving on active duty. While sufficient to establish service connection for VA purposes, it is insufficient to qualify for a disability rating by the Department of the Navy in the absence of a determination of "consequent unfitness" for continued naval service. In the Director's opinion, the available evidence is insufficient to warrant recommending a retrospective finding of unfitness for continued naval service at the time of Petitioner's release from active duty in January 2006. He advised the Board further that he was unable to read key performance evaluation data contained on the personnel disc that was enclosed with the Board's request for an advisory opinion, and that resubmission of the request would be appropriate if Petitioner's performance evaluations became available.

h. With regard to the issue of Petitioner's performance evaluations, the Board notes that Marines in the grade of corporal and below receive proficiency and conduct (pro/con) marks, rather than fitness reports or written performance evaluations. Petitioner's pro/con marks are not shown in the available records; however, as he received an honorable discharge, which requires satisfactory pro/con marks, it is unlikely that his marks would be probative of his unfitness for duty on 3 January 2006.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner suffered from the initial manifestations of SLE during his period of active duty service from 4 January 2005 to 3 January 2006. The Board accepts his contention that he continued to suffer from symptoms of undiagnosed or treated SLE after he was released from active duty. Accordingly, it concludes that it would be in the interest of justice to correct his record to show that he was not discharged from the USMCR and that proper authority determined that his SLE condition was incurred in the line of

duty.

In view of the foregoing, 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 he was not discharged from the Marine Corps Reserve, and that proper authority determined that his condition of systemic lupus erythematosus was incurred in the line of duty.

b. That Petitioner be accorded a comprehensive medical evaluation as soon as practicable and thereafter that his case be forwarded to the Physical Evaluation Board for a determination of his fitness for duty. Current address: P.O. Box 368, PELAHATCHIE MS 39145

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.

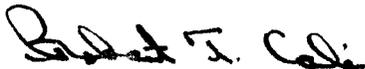
ROBERT D. ZSALMAN  
Recorder

  
JAMES R. EXNICIOS  
Acting Recorder

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

  
W. DEAN PFEIFFER

Approved:



12-19-08

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