



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

JRE
Docket No. 02169-08
2 April 2009

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) SNCORB ltr 5220 CORB:002, 12 Feb 09
(3) 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 vice discharged.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 March 2009 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. In correspondence attached as enclosure (2), the Director, Secretary of the Navy Council of Review Boards advised the Board, in effect, that Petitioner's condition of detrusor hyperreflexia should have been rated at 40%, rather than 20%. In the Director's opinion, none of Petitioner's other conditions rendered him unfit by reason of physical disability. He

recommends that Petitioner's record be corrected to show that he was transferred to the TDRL, vice discharged with entitlement to severance pay.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), 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 on 31 August 2007.

b. That Petitioner's naval record be further corrected to show that on 1 September 2007, he was transferred to the Temporary Disability Retired List in accordance with the provisions of 10 US Code 1202, with a disability rating of 40% under Department of Veterans Affairs code 7599-7542 for detrusor hyperreflexia.

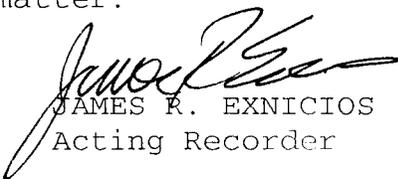
c. That Petitioner be afforded a periodic physical examination as soon as practicable. Current address: 


d. That so much of Petitioner's request for correction of his naval record as exceeds the foregoing be denied.

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

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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