



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

JRE
Docket No. 03574-08
11 May 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) SECNAV CORB ltr 5220 CORB:002, 26 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 due to a back condition and posttraumatic stress disorder

2. The Board, consisting of Messrs. W. [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 23 April 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. Enclosure (1) was filed in a timely manner.

c. In correspondence attached as enclosure (2), the Director, Secretary of the Navy Council of Review Boards (CORB) advised

the Board, in effect, that in his opinion Petitioner was unfit for duty by reason of physical disability due to intervertebral degenerative disc disease, L4-L5, that was ratable at 20% disabling. In addition, he stated that there is insufficient evidence that Petitioner's psychiatric conditions resulted in duty impairment sufficient to have rendered him unfit for continued naval service. In that regard, he noted that Petitioner's fitness report for the 31 March through 6 November 2006 period extols his administrative and intellectual accomplishments, and included his reporting senior's highest recommendation for promotion. The Director, CORB, recommended that Petitioner's record be corrected to show that he was discharged by reason of physical disability with entitlement to disability severance pay, vice by reason of a condition, not a disability, which interfered with his performance of duty.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board concludes that Petitioner was unfit for duty by reason of physical disability due to intervertebral degenerative disc disease, L4-L5. In addition, the Board concluded that Petitioner failed to submit sufficient evidence to demonstrate that he was unfit for duty because of the symptoms of his posttraumatic stress and depressive disorders.

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 on 5 November 2006, the Secretary of the Navy found him unfit to perform the duties of his rank by reason of physical disability due to intervertebral degenerative disc disease, L4-L5, which was incurred while Petitioner 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 20% 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 5243; and that as accepted medical principles indicate the disability is of a permanent nature, the Secretary directed that Petitioner be discharged with entitlement to disability severance pay effective 6 November 2006 pursuant to 10 U.S. Code

1203.

b. That so much of Petitioner's request for corrective action as exceeds the foregoing be denied.

c. 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. MANICIMOS
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.


For W. DEAN PFEIFFER