



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

JRE  
Docket No. 05008-08  
2 March 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  
(2) 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 separated or retired by reason of by reason of physical disability.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 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. Petitioner served on active duty in the Navy from 12 November 1992 to 8 March 1996, when he was transferred to the Temporary Disability Retired List (TDRL) with a disability rating of 30% for a psychotic disorder, not otherwise specified. On 14 January 1997, the Department of Veterans Affairs (VA) awarded him a 10% rating for the psychotic disorder, and added a rating of 20% for residuals of a right ankle sprain. On 7 April 2005, the President, Physical Evaluation Board, directed that

Petitioner's name be removed from the TDRL, and that he be discharged from the Navy without entitlement to disability benefits provided by title 10, U.S. Code, chapter 61, based on his failure to appear for a periodic physical examination. On 3 April 2007, the VA confirmed the 10% rating for the psychotic disorder, and reduced the rating for the ankle sprain to 10%.

c. Petitioner contends, in effect, that he was not notified of his scheduled physical examination because the PEB did not have his correct address, even though he had submitted and address change.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and resolving doubt in Petitioner's favor, the Board concludes that Petitioner remained unfit for duty as of 7 April 2005, and that it would be in the interest of justice to excuse his failure to report for a required physical examination, and to correct his record to show that he was discharged by reason of physical disability with entitlement to severance pay. corrective action.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 7 April 2005, he was discharged by reason of physical disability with entitlement to severance pay pursuant to 10 U.S. Code 1203, with a 10% rating under VA code 9210 for a psychotic disorder not otherwise specified.

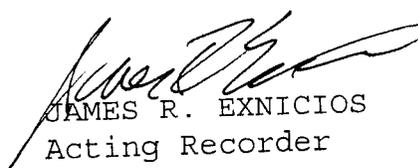
b. That so much of Petitioner's request for correction of his record as exceeds the foregoing be and hereby is denied.

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. 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