



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

JRE
Docket No. 06536-08
16 June 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) 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 or that he be permitted to reenlist.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 June 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. Enclosure (1) was filed in a timely manner.

c. Petitioner initially enlisted in the Navy on 13 August 1993. He was released from active duty on 11 February 2003 and transferred to the Temporary Disability Retired List (TDRL) with a disability rating of 30% under Department of Veterans Affairs (VA) code 9434 for major depressive disorder and related dysthymic disorder. The Physical Evaluation Board reevaluated Petitioner's case on 24 November 2006 and found him fit for

duty. He initially rejected that finding and requested a formal hearing, but later accepted the finding of fitness. On 1 November 2006, the President, PEB, announced that Petitioner had been found fit for duty, and advised the Chief of Naval Personnel that with Petitioner's consent, and if he was otherwise qualified, "he shall be reappointed or re-enlisted". Petitioner applied for reenlistment, but was unable to reenlist after a medical advisor to the Navy Recruiting Command (NRC) concluded that further enlistment processing was not warranted because of his history of major depression and dysthymia. He was discharged effective 8 January 2007.

d. Effective 12 February 2003, the VA awarded Petitioner a disability rating of 50% for major depression with dysthymia, and separate 10% ratings for epicondylitis and ulnar nerve entrapment syndrome, left arm.

d. The Manual of the Medical Department, section 15-29 provides, in effect, that once an individual has been found fit for duty by the PEB, the previously unfitting condition(s) and any other conditions that existed prior to his transfer to the TDRL which have not changed materially, will not be considered disqualifying.

CONCLUSION:

Upon review and consideration of all the evidence of record, and particularly in view of the fact that Petitioner was found not qualified for enlistment due to the depressive disorders that were reviewed by the PEB and not considered to be unfitting, an injustice has occurred that warrants the following corrective action.

RECOMMENDATION:

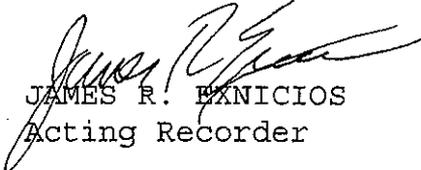
a. That Petitioner's naval record be corrected to show that his name was not removed from the Temporary Disability Retired List and that he was not discharged from the Navy on 8 January 2007.

c. That Petitioner be afforded a periodic physical examination as soon as practicable. Current address: 2744 Ann Drive, CLARKSVILLE TN 37040

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

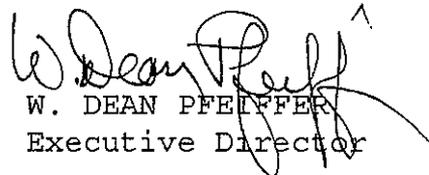
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's 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
Executive Director