



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

JRE
Docket No. 07552-08
27 May 2009

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED], USN, RET, [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 retained on active duty in a permanent limited duty (PLD) status until 1 October 2008, at which time he would have completed more than 20 years of active duty service. He contends that the denial of his request for PLD status was arbitrary and capricious.

2. The Board, consisting of Messrs. W. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 May 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 served in the US Marine Corps Reserve from 21 September 1983 to 26 June 1984, and completed 16 days of active duty service. He was appointed as an ensign, US Navy Reserve, on 27 July 1988, and entered on extended active duty on 21 September 1988. His active duty service date was established as

5 September 1988. On 14 February 2007, the Physical Evaluation Board (PEB) found him unfit for duty due to chronic fatigue syndrome and Parkinson's disease, rated at 40% and 30%, respectively, for a combined rating of 60%. On or about 30 April 2007, a PEB official recommended approval of Petitioner's request for retention on active duty in a limited duty status until 1 October 2008. On 17 July 2007, the Commander, Navy Personnel Command, denied Petitioner's request for retention on active duty in a PLD status. He stated that he had denied the request because Petitioner did not meet the requirements of SECNAVISST 1850.4E (Disability Evaluation Manual) and/or the approval of his request was not in the best interest of the Navy. Petitioner was released from active duty on 31 July 2007, and transferred to the Temporary Disability Retired List, having completed 18 years, 10 months and 26 days of active service.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that although Petitioner has not demonstrated that the denial of his request for PLD status was erroneous. It concludes that the denial of his request was unjust, as he did meet the requirements of SECNAVINST 1850.4E and, as reflected in his fitness reports, demonstrated the ability to provide valuable service to the Navy while in a limited duty status. Accordingly, 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 released from active duty on 31 July 2007, and that his name was not placed on the Temporary Disability Retired List effective 1 August 2007.

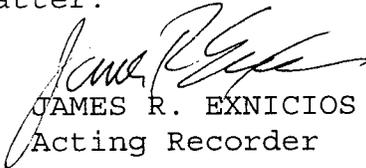
b. That Petitioner's naval record be further corrected to show that he remained on active duty in a permanent limited duty status until 4 September 2008, when he completed 20 years of active duty service; and that his name was placed on the Temporary Disability Retired List on 5 September 2008, with a combined disability rating of 60%, in accordance with the approved findings of the Physical Evaluation Board dated 11 February 2007.

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

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