



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

JRE
Docket No. 10300-08
12 December 2008

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 her naval record be corrected to show that she was honorably discharged by reason of physical disability.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 December 2008 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. Petitioner underwent a pre-enlistment physical examination on 30 May 2003, and completed a Report of Medical History in which she concealed her history of knee right injuries, reconstructive knee surgery, and pain. She enlisted in the Navy Reserve on 30 May 2003. On 3 August 2003 she enlisted in the Navy under the provisions of the Navy College Assistance Student Head Start (NAVYCASH) program, which permitted her to attend

college in an active duty status for up to twelve months before reporting for recruit training. She reported to the Recruit Training Command, Great Lakes, Illinois, on 26 May 2004. Shortly after reporting sought medical care for knee pain and disclosed her pre-service history of knee injury and corrective surgical procedures. She denied sustaining any significant trauma to her knees while on active duty. On 29 June 2004, she was discharged from the Navy by reason of erroneous entry/failed to meet medical/physical procurement standards due to her pre-existing right knee condition. AS a result of administrative error, she received an uncharacterized entry level separation. In a rating decision dated 24 February 2005, the Department of Veterans Affairs (VA) granted Petitioner's request for service connection and disability compensation for osteoarthritis of the right knee. The award was based on the unsubstantiated conclusion of a VA physician that "while she had some degree of osteoarthritis prior to entering into active duty [sic] certainly worsened the arthritis". The rating decision indicates that there was evidence of early arthritis and subjective pain in the knee, but minimal objective evidence of impairment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner has failed to submit sufficient relevant evidence to demonstrate that she was unfit for duty by reason of physical disability that was incurred in or aggravated by her active naval service. Her receipt of disability compensation from the VA is not probative of the existence of error or injustice in her naval record because VA rating determinations are not binding on the Department of the Navy. The Board also concludes that in view of the fraudulent nature of Petitioner's enlistment, it would not be in the interest of justice to grant her military disability benefits under any circumstances. Accordingly, the Board denied Petitioner's request for correction of her record to show that she was separated from the Navy by reason of physical disability.

As Petitioner was no longer in an entry level status when separation action was initiated in her case, her service should have been characterized.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 29 June 2004, she was honorably discharged by reason of

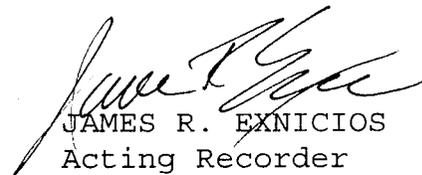
erroneous entry, failed medical/physical procurement standards, and assigned a reentry code of RE-4.

b. That so much of Petitioner's request for correction of her naval record 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 if 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