



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

JRE
Docket No. 10491-07
21 November 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 w/attachments
(2) Dir, SECNAVCORB ltr 5220 CORB:002, 20 Sep 08
(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, vice discharged with entitlement to disability severance pay.

2. The Board, consisting of Ms. [REDACTED] and Messrs [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 14 November 2008 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 on active duty in the Marine Corps from 18 August 2003 to 31 August 2007, when he was discharged by reason of physical disability with separate ratings of 10% for status/post right knee reconstructive surgery and posttraumatic stress disorder, for a combined rating of 20%.

d. Petitioner was diagnosed with posttraumatic stress disorder as a result of traumatic events he experienced during two tours of duty in Iraq as a field artillery cannon crewman. The condition treated with Celexa, and antidepressant, and Ambien, a sleeping medication. Effective 1 September 2007, the Department of Veterans Affairs (VA) awarded him disability ratings of 50% for posttraumatic stress disorder, 10% for status/post corrective surgery, right knee, 10% for left knee strain, and 10% for tinnitus (ringing in the ears), for a combined final rating of 70%.

e. In correspondence attached as enclosure (2), the Director, Secretary of the Navy Council of Review Boards, advised the Board, in effect, that Petitioner's mental condition increased in severity between 6 June 2007, when his medical board psychiatric addendum was written and he was given a global assessment of functioning (GAF) of 62 (mild symptoms), and late July 2007, when he underwent a psychiatric evaluation by a VA contract physician, and his GAF was estimated at 55 (moderate symptoms). The Director noted that the VA found " 'occasional decrease in work efficiency and inability to perform work tasks' without an indication of objective verification or specific tasks involved. The latter is important since impairment in performing those tasks more relevant to deployability would not be reflective of Petitioner's impairment for civilian industrial adaptability which...forms the basis for determining neither unfitness nor the appropriate rating by the DON PEB... Moreover, the member accepted the 10% finding of the PEB for posttraumatic stress disorder." The Director stated that the left knee strain does not appear to have rendered Petitioner unfit for duty, and as such is not ratable by the PEB. In the Director's opinion, the determination made by the PEB appears to be correct; however, should additional evidence become available, he would welcome reconsideration.

f. A copy of enclosure (2) was sent to Petitioner for his review and comment. He has not replied to date.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the comments contained in enclosure (2), the Board concludes, after resolving doubt in Petitioner's favor, that he should have been temporarily retired by reason of physical disability, rather than discharged. In this regard, it

notes that the VA examination that formed the basis for the 50% rating was conducted while Petitioner was still on active duty. The Board concludes that in view of the increase in severity of the posttraumatic stress disorder prior to his discharge, it would be in the interest of justice to correct his record to show that he was transferred to the Temporary Disability Retired List, which would permit the PEB to reevaluate that condition and assign a final rating.

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 he was not discharged by reason of physical disability on 31 August 2007.

b. That Petitioner's naval record be further corrected to show that on 1 September 2007, he was transferred to the Temporary Disability Retired List with a combined disability rating of 30% for posttraumatic stress disorder, rated at 20% under VA code 9411, and chronic right knee pain, status/post right knee ACL reconstruction with residual mild laxity, rated at 10% under VA code 5257.

c. That Petitioner be afforded a periodic physical examination as soon as practicable. Current address:

[REDACTED]

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

4. 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

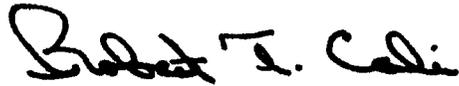

JAMES R. XNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your

review and action.


W. DEAN PFEIFFER

Review and approved:


11-26-08

Reviewed and ~~dis~~approved: