



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

JRE

Docket No. 10834-08
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 his naval record be corrected to show that he was separated from the Navy on 17 September 1990 with an honorable discharge. He contends that the drowsiness which caused him to fall asleep on post was a side-effect of a medication he had been prescribed for knee pain.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 December 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. Although the application was not timely filed, the Board finds it to be in the interest of justice to waive the statute of limitations and consider the application on the merits.

c. Petitioner enlisted in the Navy on 13 February 1990. He received nonjudicial punishment on 24 July 1990 for misbehavior

as a sentinel by sleeping while posted to a building security watch that required him to observe perimeter security monitors. His commanding officer determined that the medication Petitioner was taking on the day in question consisted of buffered aspirin that would not have caused drowsiness. On 2 August 1990, the Physical Evaluation Board (PEB) found Petitioner unfit by reason of physical disability due to patellofemoral syndrome, which it rated at 10%. Those findings were never executed because Petitioner was discharged on 17 September 1990 by reason of misconduct/commission of a serious offense, with a discharge under other than honorable conditions. The serious offense was that for which he received nonjudicial punishment on 24 July 1990.

CONCLUSION:

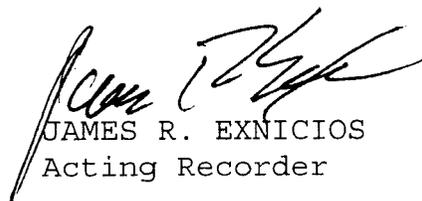
Upon review and consideration of all the evidence of record, the Board concludes that although Petitioner was properly discharged by reason of misconduct/commission of a serious offense with a discharge under other than honorable conditions, it would be in the interest of justice, as a matter of clemency, to upgrade his discharge to general at this time.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 17 September 1990, he was discharged by reason of misconduct/commission of a serious offense, with a general discharge vice the discharge under other than honorable conditions he was awarded on that date.
 - b. That so much of Petitioner's request for correction of his 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

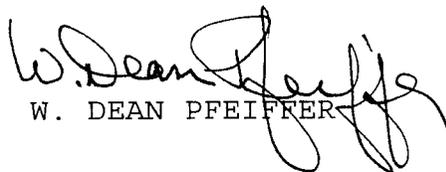
proceedings in the above entitled matter.

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