



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

JRE  
Docket No. 11135-08  
7 October 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 discharged by reason of physical disability vice misconduct.

2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 September 2009 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 18 August 2004. On 29 July 2006, his commanding officer recommended that he be discharged for the convenience of the government due to migraine headaches that were considered to be a physical or mental condition which interfered with his performance of duty but were

not disabling, and by reason of misconduct-commission of a serious offense, namely misbehavior of a sentinel or lookout, for which he had received nonjudicial punishment on 3 March 2006. He was honorably discharged by reason of misconduct on 21 August 2006.

d. Petitioner presented evidence in support of his application which suggests that the condition diagnosed as migraine headaches may have been related to a congenital heart defect that was diagnosed after he was discharged from the Navy.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner failed to submit sufficient relevant evidence to demonstrate that he was unfit for duty by reason of physical disability that was incurred in or aggravated by his naval service. It concludes further that he would not have been processed for discharge by reason of misconduct but for the fact that his headache condition, while not disabling, interfered with his performance of duty and warranted his separation from the Navy. Accordingly, the Board believes that it would be in the interest of justice to correct his record to show that he was discharged for the convenience of the government vice misconduct.

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 on 21 August 2006, he was honorably discharged for the convenience of the government by reason of a physical or mental condition, not a disability, in accordance with Military Personnel Manual section 1910-120, vice by reason of misconduct-commission of a serious offense, and that he was assigned a reentry code of RE-3G vice RE-4.

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

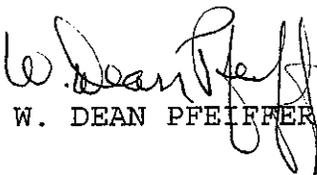
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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