



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

JRE
Docket No. 11259-08
27 May 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) SECNAVCORB ltr 5220 CORB:002, 5 May 09
(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 due to a brain tumor.

2. The Board, consisting of Messrs. W. [REDACTED], [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 on active duty in the Marine Corps from 18 June 2007 to 22 August 2008, when he was discharged by reason of misconduct/pattern of misconduct, with a discharge under other than honorable conditions.

d. In correspondence attached as enclosure (2), the Director, Secretary of the Navy Council of Review Boards, advised the

Board, in effect, that the available evidence suggests that Petitioner's brain tumor was likely incurred while he was on active duty, and that it played a role in rendering him vulnerable to the behavioral infractions which resulted in his discharge by reason of misconduct. Accordingly, he recommended that Petitioner's request be granted as recommended below.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), 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 misconduct on 22 August 2008.

b. That Petitioner's naval record be further corrected to show that he was released from active duty on 31 August 2008, and that his name was placed on the Temporary Disability Retired List effective 1 September 2008, with a disability rating of 100% under code 8002, for anaplastic astrocytoma (grade III) of the left parietal lobe of the brain.

c. That Petitioner be afforded a periodic physical examination in or about March 2010. Current address:
C/O [REDACTED] 26

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