



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

JRE  
Docket No. 04464-09  
16 August 2010

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 or retired by reason of physical disability.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 5 August 2010 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. A medical evaluation board (MEBD) report dated 13 May 2008 indicates that Petitioner, a member of the Navy Reserve, was "clearly unable" to perform his duties as a result of the effects of posttraumatic stress disorder that was incurred while he was entitled to basic pay. The MEBD recommended that his case be referred to the Physical Evaluation Board (PEB) for determination of his fitness for duty. On 19 June 2008 Petitioner signed a statement concerning the

findings of the MEBD in which he declined to submit a statement in rebuttal, and stated that he was not "processing for separation/retirement" at that time. He was discharged from the Navy Reserve on 26 July 2008 at the expiration of his enlistment contract. As he is no longer a member of the Naval Service, he is no longer entitled to have the PEB consider his case.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that had Petitioner been properly advised, and/or administrative error not occurred, he would have extended his enlistment so that he could be processed through the disability evaluations system. Had that occurred, he would have been found unfit for duty by reason of physical disability and transferred to the Temporary Disability Retired List. Accordingly, 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 on 26 July 2008.

b. That Petitioner's naval record be further corrected to show that on 27 July 2008, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of rate by reason of physical disability due to posttraumatic stress disorder, which was incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability was the direct result of a combat-related injury; that the disability is considered to be ratable at 50% in accordance with 38 Code of Federal Regulations section 4.129, under Department of Veterans Affairs code number 9411; and that as accepted medical principles indicate the disability may be of a permanent nature, the Secretary directed that Petitioner's name be placed on the Temporary Disability Retired List effective 26 July 2008 pursuant to 10 U.S. Code 1202.

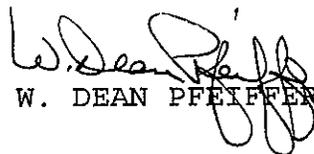
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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