



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

JRE
Docket No. 06844-09
27 April 2010

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Chief, BUMED ltr 6320 Ser:M00JB/09UM00J240, 20 Jul 09
(3) NPC memo 1610 PERS-32, 1 Sep 09,
(4) 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 her naval record be corrected to show she is entitled to Incentive Special Pay (ISP) for years 2004 and 2005, and by the removal therefrom of four fitness reports, all information pertaining to command directed mental health evaluations, and findings that she was not aerodynamically adaptable (NAA).

2. The Board, consisting of Messrs. J. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 April 2010 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. In correspondence attached as enclosure (2), the Board was advised by the Chief, Bureau of Medicine and Surgery (BUMED), in effect, that the information in question pertaining to Petitioner's mental health evaluations and the determination that she was NAA is properly filed in her record. In addition, Petitioner met the criteria for ISP for 2004 but there is a question concerning the timeliness of her application for that pay. It appears that she met the criteria for ISP in 2005 but her request was never received by BUMED. The Chief, BUMED recommends that she receive ISP for 2004 if the Board concludes that there was reasonable cause for the late submission of her request for ISP, and that she be entitled to ISP for 2005 if the Board determines that she made a timely request for ISP and that there was reasonable cause for its loss or failure to be forwarded to BUMED in a timely manner. If payment of ISP for 2005 is approved, it should be apportioned only for the periods she had active medical specialty privileges, i.e., 6 October-22 November 2005 and 13 February-5 October 2006.

d. In correspondence attached as enclosure (2), the Commander, Navy Personnel Command, expressed the opinion that three of the four contested fitness reports are valid and properly filed in Petitioner's record, and that she has not demonstrated that there was no rational support for the actions of any of the reporting seniors or that any of the reporting seniors acted illegally or improperly. As the fourth report is not valid and is not filed in Petitioner's record, no action by the Board is required.

e. The staff of the Board mailed a copy of enclosures (2) and (3) to Petitioner for her review and possible rebuttal. She did not submit a rebuttal statement or any additional evidence or argument.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner has failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice with regard to the fitness reports in question that are filed in her record, or the information in her record pertaining to command directed mental health evaluations and findings that she was not aerodynamically adaptable. In this connection, the Board substantially concurs with the comments contained in enclosures (2) and (3). Accordingly, so much of her application as pertains to those issues is

denied.

With regard to her request for ISP, the Board concludes that Petitioner has submitted sufficient evidence to demonstrate her entitlement to ISP for 2004 and portions of 2005, as specified in enclosure (2).

In view of the foregoing, the Board finds an injustice that warrants the following corrective action.

RECOMMENDATION:

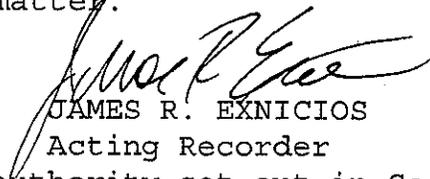
a. That Petitioner's naval record be corrected to show that her application for ISP for the periods 6 October 2004-5 October 2005 and 6 October 2005-5 October 2006 were submitted and approved by proper authority in a timely manner, and that she is entitled to ISP for the former period, and an apportioned payment for the latter, with no entitlement for the period 23 November 2005-12 February 2006 when she did not have active medical specialty privileges.

b. That no further relief be granted.

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