



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

JRE
Docket No. 07024-10
29 April 2011

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
(b) SECNAVINST 1850.4E

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 his name was not removed from the Temporary Disability Retired List and that he was not discharged from the Marine Corps.

2. The Board, consisting of Messrs. Clemmons, Neuschafer and Silberman, reviewed Petitioner's allegations of error and injustice on 28 April 2011 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 was released from active duty on 26 February 2006 and transferred to the TDRL with a disability rating of 30% for residuals of a combat-incurred gunshot wound of the left thigh. Effective 27 February 2006, the Department of Veterans Affairs (VA) awarded him disability ratings of 50% for posttraumatic stress

disorder, 30% for residuals of the gunshot wound, and separate ratings of 10% for tinnitus and two scars. He was reevaluated by the Physical Evaluation Board on 24 September 2007 and found fit for duty with regard to the residuals of his wound. As the other conditions rated by the VA were not considered unfitting or contributing to an unfitting condition at the time of his placement on the TDRL, those conditions were not formally evaluated or rated by the PEB.

d. Reference (b), paragraph 3618, TDRL Reevaluation With Regard to Compensability of New Diagnoses/Reevaluation of Category III Conditions, provides, in effect, that conditions newly diagnosed during a TDRL periodic physical examination shall be compensable when the condition is unfitting and it was caused by the condition for which the member was placed on the TDRL or directly related to its treatment or the condition was an unfitting disability at the time the member was placed on the TDRL.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the provisions of reference (b), the Board concludes that Petitioner should be restored to the TDRL so that the PEB can determine whether or not his condition of posttraumatic stress disorder is compensable, either as a condition that was unfitting albeit undiagnosed at the time of his transfer to the TDRL, or as a condition caused by the condition for which he was transferred to the TDRL. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

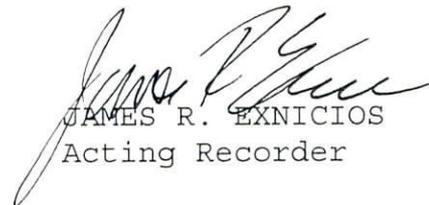
a. That Petitioner's naval record be corrected to show that he was not found fit for duty by the PEB on 24 September 2007, his name was not removed from the TDRL, and he was not discharged from the Marine Corps.

c. That Petitioner be afforded a periodic physical examination as soon as practicable; that the examination include an assessment of his condition of posttraumatic stress disorder; and that the results of the examination be reviewed by the PEB to determine whether or not the posttraumatic stress disorder is ratable in accordance with the provisions of SECNAVINST 1850.4E, paragraph 3618.

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