



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

JRE
Docket No. 08644-10
26 October 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

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 retired by reason of physical disability.

2. The Board, consisting of Messrs. W. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 20 October 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 served on active duty in the Marine Corps from 3 June 2002 to 2 June 2006, when he was released from active duty upon his completion of his active obligated service. Although he had been diagnosed with posttraumatic stress disorder and several orthopedic conditions during his enlistment, and had been prescribed Zoloft, Seroquel, Vicodin and ibuprofen for those conditions, he was considered physically qualified for separation when examined on 24 April 2006. He indicated on that date that he did not suffer from

any conditions that limited his ability to perform his duties.

d. In a rating decision dated 19 June 2006, the Department of Veterans Affairs (VA) awarded Petitioner disability ratings of 30% for posttraumatic stress disorder, separate ratings of 10% for conditions of his left and right knees, right hip, and tinnitus, and 0% ratings for four other conditions. The ratings were based on the results of an examination that had been conducted prior to Petitioner's release from active duty. The rating for the posttraumatic stress disorder was increased to 50% in December 2006, and ultimately to 70%.

e. Petitioner contends, in effect, that he was so severely affected by symptoms of posttraumatic stress disorder upon his return from combat in Iraq shortly before he was released from active duty, he just wanted to be discharged, and therefore did not request disability evaluation.

CONCLUSION:

Upon review and consideration of all the evidence of record, and resolving doubt in Petitioner's favor, the Board concludes that he was unfit for duty by reason of physical disability at the time of his release from active duty because of to the effects of posttraumatic stress disorder. Accordingly, it finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that that on 1 June 2006, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of his rank 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 is considered to be ratable at 50% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, code number 9411; and that as accepted medical principles indicate the disability might be of a permanent nature, Secretary directed that his name be placed on the Temporary Disability Retired List effective 3 June 2006 pursuant to 10 U.S. Code 1202.

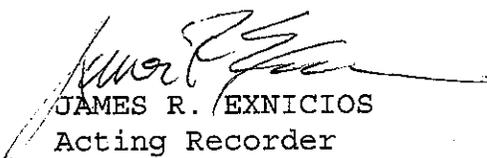
b. That Petitioner be afforded a periodic physical examination

as soon as practicable. Current address: [REDACTED]

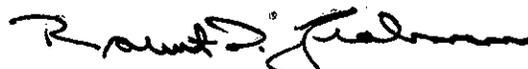
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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.


For W. DEAN PFEIFFER
Executive Director