



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

JRE

Docket No. 11213-10

1 November 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

Ref: (a) 10 U.S.C. 1552
(b) DUSD (P&R) Memorandum for the Service Secretaries,
17 Jul 09

Encl: (1) DD Form 149

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, requests correction of his record as indicated in enclosure (1).

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 October 2010 and, pursuant to its regulations, determined that the 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. Enclosure (1) was filed in a timely manner.
- b. Petitioner's case is within the category of cases covered by reference (b).
- c. Petitioner did not consent to the release of his Department of Veterans Affairs records to the Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and in accordance with the provisions of reference (b), the Board directs the partial corrective action indicated below.

As Petitioner did not submit any documentary evidence in support of his application, or consent to the release of his Department of Veterans Affairs (VA) records to the Board, he failed to demonstrate that his condition was ratable above 30% disabling in accordance with the provisions of 38 Code of Federal Regulations part 4.130 on the date of his permanent retirement, and as he was accorded a physical examination during his tenure on the Temporary Disability Retired List which was considered by the Physical Evaluation Board, there is no basis for granting further relief.

RECOMMENDATION:

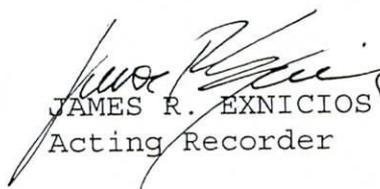
a. That Petitioner's naval record be corrected to show that when his name was placed on the Temporary Disability Retired List on 1 April 2007, he was assigned a disability rating of 50% vice 30% for posttraumatic stress disorder under VA code 9411, provided that such action does not adversely affect his total compensation, including but not limited to combat-related special compensation, and that his record be further corrected to show that the disability rating reverted to 30% effective 31 January 2010, when he was permanently retired by reason of physical disability.

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