



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

JRE
Docket No: 1160-99
21 June 2000

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 permanently by reason of physical disability due to a psychiatric disorder, functional bowel disease, cortical atrophy, and reflux disease.

2. The Board, consisting of Ms. Nofziger and Messrs. Leeman and McCulloch, reviewed Petitioner's allegations of error and injustice on 11 May 2000 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. Although, it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner was released from active duty on 21 February 1992, and transferred to the Temporary Disability Retired List the following day with a 30% rating for a depressive disorder. He also had a functional bowel disorder, which was classified as a category II condition, and cortical atrophy, classified as a category III, condition, neither of which was rated by the Physical Evaluation Board (PEB). Petitioner underwent a periodic physical examination on 19 July 1996. The examination report indicates that his condition, which was classified as chronic and severe, had remained essentially the same over the preceding eighteen months. A diagnosis of schizophrenia, undifferentiated, chronic, mild, with marked

somatization, was added. The examiner felt that Petitioner would need continuing psychiatric care on an out-patient basis "if he so chooses", and he noted that Petitioner had been unable to gain employment. On 3 September 1996, the PEB made preliminary findings that he remained unfit for duty because of the depressive disorder, but it reduced the rating to 10%. Petitioner was discharged with entitlement to disability severance pay effective 1 December 1996, in accordance with the approved findings of the PEB.

c. The Department of Veterans Affairs rated Petitioner's depressive disorder at 30%, from 22 February 1992. In a decision dated 6 August 1999, the it determined that the disorder was more properly classified as schizophrenia, and it assigned a rating of 100% from 16 June 1997. Petitioner also received a 0% rating for a condition manifested by functional bowel disease, gastroesophageal reflux and pancreatitis.

e. SECNAVINST 1850.4C, 8 March 1990, provided, in effect, that a psychotic disorder was ratable at 30% when the member required occasional outpatient treatment and medication to maintain employment and avoid re-hospitalization, and may do well on such a treatment program, although there may be some job instability and often the illness may interfere with job advancement. A 10% rating was appropriate following a psychotic episode, with or without residuals, where none of the foregoing was applicable.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's mental disorder was more severe than indicated by the 10% rating he was assigned by the Navy. The Board was not persuaded, however, that he was significantly impaired by any other conditions at the time of his placement on the TDRL, or entitled to any additional ratings when his case was finalized by the PEB in 1996.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

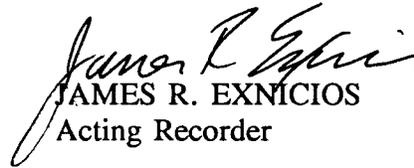
a. That Petitioner's naval record be corrected to show that he on 1 December 1996, he that he was permanently retired by reason of physical disability pursuant to 10 U.S. Code 1201, with a 30% rating under VA code 9209, vice discharged with entitlement to disability severance pay.

b. That so much of his request for corrective action as exceeds the foregoing be denied.

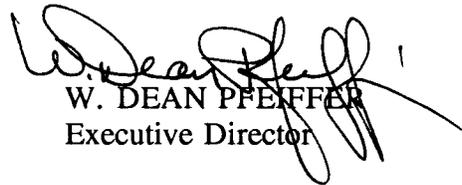
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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
Executive Director