



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

JRE
Docket No: 2846-01
10 December 2001

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 his disability is combat related.

2. The Board, consisting of Messrs. Kastner, Taylor and Schultz, reviewed Petitioner's allegations of error and injustice on 6 December 2001 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 sustained a severe injury to his left eye on 19 May 1995, as a result of being shot in the eye with a paint ball during a tactical training exercise at Naval Weapons Station Yorktown. On 5 March 1996, the Record Review Panel of the Physical Evaluation Board determined that he was unfit for duty because of the residuals of the injury, and that the injury was not combat related as defined by 26 U.S. Code 104(b)(3). He was transferred to the Temporary Disability Retired List on 1 July 1996, and subsequently permanently retired by reason of physical disability.

d. SECNAVINST 1850.4D, paragraph 2013, in effect at the time of Petitioner's permanent retirement, provides, in part, that an injury will be classified as combat related if it is incurred under conditions simulating war. This includes disabilities resulting from military training, such as war games, practice alerts, and tactical exercises, among others.

CONCLUSION:

Upon review and consideration of all the evidence of record, it is clear that Petitioner's disability was incurred under conditions simulating war, as he was injured during a tactical training exercise. 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 the disabilities which resulted in his transfer to the Temporary Disability Retired List on 1 July 1996, and his permanent retirement, are combat related as that term is defined in 26 U.S. Code 104(b)(3).

b. 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