



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

JRE
Docket No: 3238-00
19 June 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) NCPB ltr 5420 Ser:01-04, 16 Jan 01
(3) 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 assigned a disability rating for his left hip replacement, in addition to the rating for his cervical nerve root injury.
2. The Board, consisting of Messrs. Bennett, Lightle and Neuschafer, reviewed Petitioner's allegations of error and injustice on 14 July 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. Enclosure (1) was filed in a timely manner.
 - c. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards (NCPB) expressed the opinion that at the time of Petitioner's transfer to the Temporary Disability Retired List, he should have received a disability rating of 30%, for status post left hip arthroplasty, with osteoarthritis and chronic pain, vice a 10% rating for chronic hip pain, for a combined rating of 70%, vice the 50% rating he actually received. After being advised of a scrivener's error in enclosure (2), the recommended combined rating was reduced to 60%. Petitioner was advised of the reduction, and did not object thereto.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), 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 transferred to the Temporary Disability Retired List on 30 July 1999, with a 40% rating under VA code 8510 for left C5 greater than C6 iatrogenic predominately motor cervical nerve root injury, and 30% for status post left hip arthroplasty, left hip osteoarthritis with chronic left hip pain, for a combined rating of 60%.

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.


W. DEAN PFEIFFER
Executive Director