



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

JRE
Docket No: 3729-00
28 August 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORME [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 naval record be corrected to show that he reenlisted in the Navy after being found fit for duty and being removed from the Temporary Disability Retired List.
2. The Board, consisting of Ms. Gilbert and Messrs. McCulloch and Tew, reviewed Petitioner's allegations of error and injustice on 11 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. Petitioner served on active duty in the Navy from 3 April 1991 to 30 April 1992, when he was transferred to the TDRL because of Hodgkin's disease. The radiotherapy he received for that condition resulted in hypothyroidism, which was not considered unfitting. He was reevaluated by the Physical Evaluation Board (PEB) on 6 November 1996, and found fit for duty. He accepted that finding on 8 November 1997. On 2 January 1997, the President, PEB, advised the Chief of Naval Personnel (CNP) that Petitioner had been found fit for duty, and directed that Petitioner be reenlisted in the Navy if he consented and was otherwise qualified. Petitioner advised Navy officials that he wanted to reenlist, but his request was not processed in a timely manner. On 29 April 1999, he was once again advised

that he could reenlist if his physical condition had remained essentially the same as it was at his last (PEB) evaluation, he was otherwise qualified in all respects, and he consented to reenlistment. Petitioner consented to reenlistment, but was denied opportunity to reenlist based on the determination of the Chief, Bureau of Medicine and Surgery, that he did not meet established physical standards due to a history of both hypothyroidism and Hodgkin's disease, and that his hypothyroidism was unstable. The latter determination was made notwithstanding the fact that his condition had remained essentially the same as it was when the PEB found him fit for duty.

d. DOD Directive 6130.3, Physical Standards for Enlistment, Appointment and Induction, provided, in effect, that when a member was found fit for duty after a period on the TDRL, prior disabling defects and any other defects identified prior to placement on the TDRL that shall not have prevented reenlistment at that time, were not disqualifying for enlistment.

e. SECNAVINST 1850.4C, paragraph 7019, provided, in effect, that an enlisted member found fit for duty would be reenlisted, provided he was otherwise qualified, in the grade held when placed on the TDRL, or the next higher grade.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner was erroneously denied the opportunity to reenlist because of a history of conditions which were not considered unfitting by the PEB when it took final action on his case on 2 January 1997. Had his case been handled properly, and completed in a timely manner, he could have reenlisted in May 1997, when his five-year tenure on the TDRL expired. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

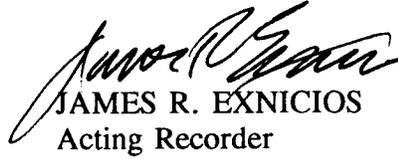
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he reenlisted in the Navy for a term of four years on 1 May 1997, as a seaman apprentice, E-2; he was promoted to seaman, E-3, effective 16 February 1998; and that he was released from active duty and transferred to the Naval Reserve on 30 April 2001, by reason of completion of active obligated service, assigned a reenlistment code of RE-1.

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