



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

JRE
Docket No: 5280-01
18 March 2002

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) NCPB ltr 5420 Ser:1-24, 1 Nov 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 retired by reason of physical disability, or, in the alternative, that he was transferred to the Fleet Reserve pursuant to the Temporary Early Retirement Authority.
2. The Board, consisting of Ms. Davies and Messrs. Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 7 March 2002 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 was discharged by reason of physical disability on 18 April 1981, because of a lower back condition rated at 20%. He completed 18 years, 1 month and 18 days of active duty service, and received disability severance pay in the amount of \$56, 829.60.
 - d. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards, expressed the opinion that at the time of Petitioner's discharge, his back condition did not meet the criteria for a final rating in excess of 20%. Accordingly, he recommended that Petitioner's request for correction of his naval record be denied.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board was not persuaded that Petitioner should have been retired by reason of physical disability, vice discharged with entitlement to disability severance pay. In this connection it substantially concurs with the comments contained in enclosure (2).

In addition to the foregoing, the Board concludes that in view of Petitioner's lengthy period of service to his country, and the premature termination of his career through no fault of his own, it would be in the interest of justice to grant his request for correction of his record to show that he transferred to the Fleet Reserve pursuant to the provisions of TERA.

RECOMMENDATION:

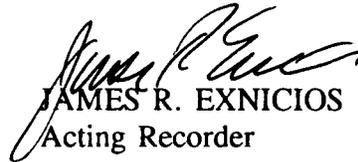
a. That Petitioner's naval record be corrected to show that he was not discharged from the Navy on 18 April 2001.

b. That Petitioner's naval record be further corrected to show that he was released from active duty on 30 April 2001, and transferred to the Fleet Reserve on 1 May 2001, pursuant to the Temporary Early Retirement Authority.

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.


For W. DEAN PFEIFFER
Executive Director