



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

JRE
Docket No: 6293-02
24 September 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) 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 he was restored to active duty during May 1996, and transferred to the Fleet Reserve during May 1999.

2. The Board, consisting of Ms. Davies and Messrs. Pfeiffer and Schultz, reviewed Petitioner's allegations of error and injustice on 12 September 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. Although enclosure (1) was not filed in a timely manner, the Board concluded that it would be in the interest of justice to waive the statute of limitations and consider the application on the merits..

c. Petitioner was released from active duty on 12 April 1991, and transferred to the Temporary Disability Retired List (TDRL) the following day with a disability rating of 100% for colon cancer. At that time, he had a history of a significant hearing loss and elevated blood pressure readings. He was reevaluated in 1995, and found to be free of cancer and significant residuals thereof. On 25 March 1996, the Physical Evaluation Board (PEB) made preliminary findings that he was fit for duty. He accepted that finding on or about 16 April 1996. On 25 April 1996, the President, PEB, advised the Chief of Naval Personnel that

Petitioner had been found fit for duty, and that if he consented, and was otherwise qualified, he should be reenlisted. Petitioner underwent a pre-enlistment physical examination on 13 May 1996, and was found disqualified for enlistment because of hypertension, defective hearing and intestinal reconstruction; however, the supervisor of the Enlisted Processing Division, Navy Recruiting Processing Station, recommended that he be granted a waiver of those conditions. On 26 December 1996, the Chief, Bureau of Medicine and Surgery (BUMED), determined that Petitioner "did not meet established physical standards due to history of mucinous adenocarcinoma of the colon (stage II) status post hemicolectomy; hypertension; and defective auditory acuity. He recommended that a waiver of physical standards not be granted. On 27 December 1996, the Commander, Navy Recruiting Command disapproved the waiver request. Petitioner was discharged from the Navy on 20 April 2000.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that the determination made by the Chief, BUMED, on 26 December 1996, that Petitioner was not qualified for enlistment was erroneous. The Board noted that a service member found fit for duty by the PEB is considered fit for enlistment as to the formerly unfitting condition. In addition, retention fitness standards are applied to any condition which existed prior to the member's placement on the TDRL, rather than the more stringent accession standards. As noted above, Petitioner had a history of elevated blood pressure readings prior to his transfer to the TDRL, as well as a significant hearing loss. Accordingly, he should have been considered fit for enlistment, notwithstanding the minor elevation in his blood pressure and the defective hearing noted on 13 May 1996, as well as to the formerly unfitting condition.

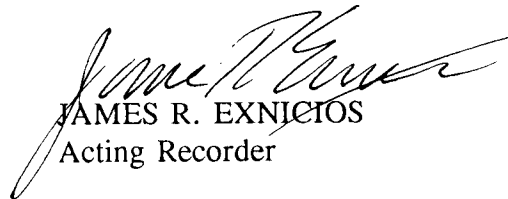
In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he reenlisted in the Navy on 31 May 1996 for a term of three years.
- b. That Petitioner's naval record be further corrected to show that he was released from active duty on 31 May 1999, and transferred to the Fleet Reserve on 1 June 1999 pursuant to the Temporary Early Retirement Authority.
- c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

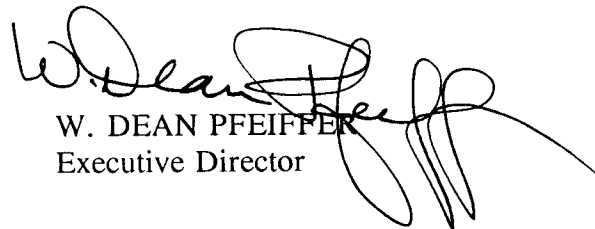
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's 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.



W. DEAN PFEIFFER
Executive Director