



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

JRE
Docket No. 07081-09
2 June 2007

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 and as amended, that the applicable naval record be corrected to show that he transferred to the Fleet Reserve pursuant to the Temporary Early Retirement Authority (TERA) effective 1 February 2000, vice being discharged with entitlement to disability severance pay on 25 January 2000. He also requests that if his primary request is granted, he not be required to repay the disability severance pay he received on or about 25 January 2000.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 May 2010, 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. Petitioner was released from active duty on 31 March 1995 and transferred to the Temporary Disability Retired List (TDRL), with a disability rating of 100% for colon cancer, having completed in excess of 15 years of active duty service. Prior to his transfer to

the TDRL he was advised by the President, Physical Evaluation Board, of his right to apply for retirement under TERA in lieu of transfer to the TDRL, and that should he be transferred to the TDRL, he might be entitled to elect retirement under TERA or separation with entitlement to disability severance pay should his condition be rated below 30% disabling. He was discharged with entitlement to disability severance pay effective 25 January 2000, upon the reduction of his disability rating to 10%.

c. DOD Instruction 1332, section E3.P7.2.1.1 provides that members with a disposition of separation for physical disability who had 15 but less than 20 years of service computed under Section 1208 of title 10, U.S. Code and whose unfitting conditions were not due to the member's intentional misconduct or willful neglect or incurred during a period of unauthorized absence would be afforded the opportunity to elect separation for physical disability or to apply for, and if approved, non-disability retirement under the Temporary Early Retirement Authority (TERA) under 10 U.S.C. 3911 (reference (b)) during the period of temporary special qualification authority beginning on October 23, 1993, and ending on October 1, 1999. The same opportunity shall be afforded to members recommended for placement on or separation from the TDRL. Authority to retire service members under TERA was ultimately extended to 2001.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that the Board concludes that although Petitioner's discharge was not erroneous, it was unjust, and that it would be in the interest of justice to correct his record to show that he was transferred to the Fleet Reserve vice being discharged with entitlement to disability severance pay. The Board was not persuaded that it would be in the interest of justice to correct his record in such a manner that he will not be required to repay the disability severance pay he received on or about 25 January 2000.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged by reason of physical disability on 25 January 2000.

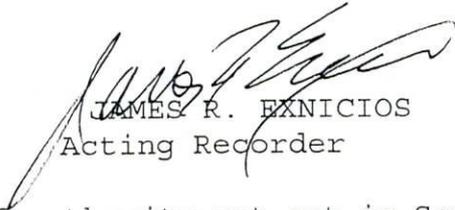
b. That his record be further corrected to show that he was transferred to the Fleet Reserve pursuant to the Temporary Early Retirement Authority effective 1 February 2000.

c. That no further relief be granted.

d. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. 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. EZNICIOS
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