



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

JRE  
Docket No. 10007-09  
28 September 2009

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) NPC memo 7220 PERS-82, 18 Sep 09  
(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 not released from active duty on 28 February 2009; that he has remained on active duty since that date; that he be reimbursed for medical and related travel expenses he has incurred since then because of his prostate cancer condition; and that he be granted a waiver of the requirement that he repay the retired pay he has received since 1 March 2009.

2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 September 2009 and, pursuant to its regulations, determined that the partial 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), an official of the Navy Personnel Command who has cognizance over the subject-matter of the application advised the Board, in effect, that Petitioner was released from active duty while suffering from a condition ultimately diagnosed as prostate cancer. Had his office been advised of Petitioner's condition prior to his release, it would have authorized Petitioner's retention on active duty for treatment and possible referral to the Disability Evaluation System. He recommended that Petitioner's request for restoration to active duty, reimbursement of expenses, and waiver of retired pay already received be granted.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board concludes that it would be in the interest of justice to correct Petitioner's record to show that he was not released from active duty on 28 February 2009, and that he has remained on active duty since that date in order to undergo evaluation and treatment of prostate cancer. As Petitioner is entitled to retired pay from 1 March 2009 through the date of the Board's action, he would be unjustly enriched if he were permitted to retain that pay and receive full pay and allowances for the same period of time. Accordingly, the Board denied that portion of his request. The Board did not have sufficient evidence before it to make an informed decision on his request for reimbursement of medical and travel expenses; consequently, it did not make a determination on the merits of that portion of his request.

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 was not released from active duty on 28 February 2009, and that he has been retained on active duty since that date to undergo evaluation and treatment of prostate cancer.

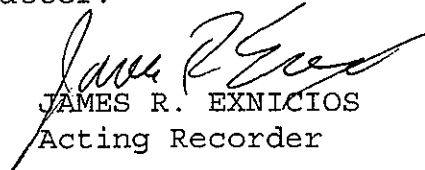
b. That the portion of his request which pertains to waiver of repayment of the retired pay he has received for the period from 1 March 2009 to the date of the Board's action be denied.

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