



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

JRE  
Docket No. 03689-10  
14 February 2011

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, that his naval record be corrected to show that he was not discharged by reason of physical disability. He contends that he made a timely demand for a hearing, and was therefore entitled to a hearing before the Physical Evaluation Board prior to being discharged.

2. The Board, consisting of Messrs. [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 February 2011 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 released from active duty on 2 September 2004 and transferred to the Temporary Disability Retired List with a disability rating of 40% for diabetes mellitus. On 21 January 2010, the PEB made preliminary findings that he remained unfit for duty and that his disability was ratable at 20%. As the PEB did not receive his election of options by 8 March 2010, it directed that

his disability evaluation be finalized. On 9 March 2010 the President, PEB, advised the Chief of Naval Personnel of the foregoing findings and requested that Petitioner be discharged with disability severance pay.

CONCLUSION:

Upon review and consideration of all the evidence of record, and resolving doubt in Petitioner's favor, the Board concludes that Petitioner made a timely demand for a hearing that was not received by the PEB due to no fault of his. 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 was not discharged by reason of physical disability pursuant to PEB Index N21000121 Notification of Decision dated 9 March 2010.

b. That Petitioner be accorded a hearing before the PEB as soon as practicable. Current address: [REDACTED]  
[REDACTED]

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