



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

JRE
Docket No: 1052-01
2 October 2001

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) CNP ltr Pers-271/PJS, 412 94 7577, 30 Jul 98
(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 on 4 January 1997, vice transferred to the Temporary Disability Retired List (TDRL) on that date.

2. The Board, consisting of Messrs. Goldsmith, Shy and Zsalman, reviewed Petitioner's allegations of error and injustice on 27 September 2001 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 transferred to the Fleet Reserve effective 4 January 1997. Subsequently, the Physical Evaluation Board (PEB) determined that he was permanently unfit by reason of physical disability rated at 10% as of 4 January 1997. On 30 July 1998, the Chief of Naval Personnel advised Petitioner in a letter sent via the Defense Finance and Accounting Service (DFAS) that he had been transferred to the retired list by reason of permanent physical disability effective 4 January 1997. DFAS rejected that action because the CNP lacks the authority to direct the retroactive retirement of a service member.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner was unfit by reason of physical disability rated at 10% on 4 January 1997, and that he should have been permanently retired by reason of physical disability effective that date. Accordingly, it finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected to show that he was transferred to the retired list on 4 January 1997, pursuant to 10 U.S. Code 1201, by reason of permanent disability, with a 10% disability rating.

b. 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