



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

JRE

Docket No: 1885-00

3 July 2001

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) NCPB ltr 5420 Ser:01-09, 14 Feb 01
(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.
2. The Board, consisting of Messrs. Bishop, Lightle and Neuschafer, reviewed Petitioner's allegations of error and injustice on 14 June 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. Enclosure (1) was filed in a timely manner.
 - c. Petitioner was discharged by reason of physical disability on 30 November 1999, without entitlement to disability benefits administered by the Department of the Navy. His disability, social phobia, was classified as existing prior to service (EPTS), not aggravated by service. He completed in excess of 16 years of active service.
 - d. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards, advised the Board, in effect, that under legislation enacted on 5 October 1999, Petitioner's condition should have been rated, notwithstanding its EPTE origin, given the fact that he had completed in excess of 8 years of active duty service. The Director

recommended that a rating of 10% be assigned, barring further documentation indicating that a higher rating was warranted.

e. In response to enclosure (2), Petitioner submitted a lengthy personal statement concerning his condition and its effects on his performance of duty and ability to adjust, as well as medical records which indicate that his social phobia is of more than a mild degree of severity. Following the completion of its review of the application, the Board was advised by Petitioner that the Social Security Administration had determined he was unable to engage in substantially gainful employment, and was therefore disabled under the laws administered by that activity.

f. The Board noted that disability rating guidance for mental disorders contained in SECNAVINST 1850.4D, enclosure (9), provides that a 10% rating is appropriate where there is occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress; or where symptoms are controlled by continuous medication. Generally, there is adequate job adjustment potential and some instability in social adjustment. Medication may be required, and there is a possible need for psychotherapy and monitoring of medication. A 30% rating is appropriate where there is occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, due to such symptoms as depressed mood, anxiety, suspiciousness, panic attacks, chronic sleep impairment and mild memory loss. Generally, there is job instability and moderately unstable social adjustment. Medication is usually required, and there is a need for periodic or frequent psychotherapy.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially the information submitted in response to enclosure (2), the Board concludes that Petitioner's condition, although not meeting all of the criteria for a 30% rating, was significantly more severe than indicated by a 10% rating. Accordingly, it 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 on 30 November 1999.

b. That Petitioner's naval record be further corrected to show that on 30 November 1999, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of his rank by reason of physical disability due to social phobia, which was aggravated while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that Petitioner has completed over eight years of active service; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary

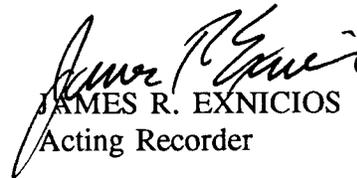
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found Petitioner unfit, Code Number 9499-9403; and that accepted medical principles indicate the disability may be of a permanent nature, accordingly, the Secretary placed Petitioner's name on the Temporary Disability Retired List effective 1 December 1999 pursuant to 10 U.S. Code 1202.

c. That Petitioner be afforded a periodic physical examination as soon as practicable.
Current address: 75 Francis Avenue, Sloan, NY 14212

d. 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