



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

JRE
Docket No. 02407-01
5 April 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) 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 and discharged from the Navy on 14 December 2000, and that he be processed for physical disability retirement.

2. The Board, consisting of Messrs. Pfeiffer, Adams and George, reviewed Petitioner's allegations of error and injustice on 30 March 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 noted to have hemoccult positive stool during October 2000, but results of fecal occult blood testing conducted at that time were negative. He was released from active duty and discharged from the Navy on 14 December 2000. During March 2001, he was diagnosed as suffering from metastatic colon cancer, and became the subject of a medical evaluation board (MEB) on 28 March 2001. The MEB assessed his condition as grave, and recommended referral to the Physical Evaluation Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the findings of the 28 March 2001 medical evaluation board, the Board concludes that Petitioner was suffering from metastatic colon cancer when discharged from the Navy in December 2000. Had the condition been discovered prior to his discharge, he would have been retained on active duty, referred to the Physical Evaluation Board, and ultimately retired by reason of physical disability. 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 released from active duty or discharged on 14 December 2000.

b. That Petitioner's naval record be further corrected to show that on 28 March 2001, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of his rate by reason of physical disability due to metastatic colon cancer, which was incurred 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 the disability is considered to be ratable at 100% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, code number 7343; that the disability is not combat related; and that as accepted medical principles indicate the disability may be of a permanent nature, the Secretary directed that he be released from active duty on 30 March 2001, and transferred to the Temporary Disability Retired List effective 31 March 2001 pursuant to 10 U.S. Code 1202.

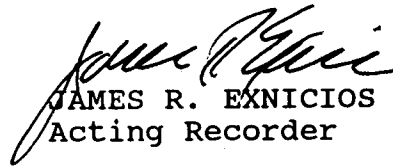
c. That his record be further corrected to show that on 30 March 2001, he elected Survivor Benefit Plan coverage for his spouse and children, with coverage to be based on his full gross retired pay.

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

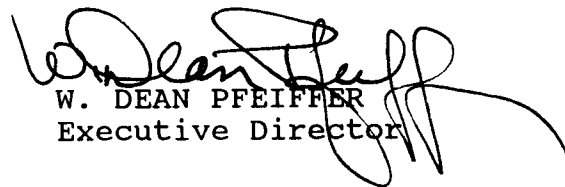
is a true and complete record of the Board's proceedings in the above entitled matter.

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