



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

JRE  
Docket No: 3498-00  
15 August 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 w/attachments  
(2) Dir, NCPB ltr 5420 Ser: 01-14  
(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 Ms. Wiley and Messrs. Kastner and Mazza, reviewed Petitioner's allegations of error and injustice on 19 July 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 evaluated by a medical board on 27 April 1999 and given a diagnosis of nasal papillomatosis. The medical board report and an addendum thereto indicate that the condition is chronic, and that Petitioner had undergone surgery on four different occasions to remove polyps from his nasal passages, soft palate and (on once occasion) the larynx, and he was on limited duty for approximately one year. On 9 September 1999, the Physical Evaluation Board rated his condition at 10% under VA code 6280-6599-6510, by analogy to sinusitis. He rejected those findings and demanded a hearing, but later changed his mind and accepted the findings. He was discharged with entitlement to disability severance pay on 30 November 1999. Effective 1 December 1999, the Department of Veterans Affairs (VA)

rated his condition at 50% by analogy to sinusitis. It appears that the rating was based in large part on the statement of Dr. McF..., dated 4 October 1999, which indicates that Petitioner was suffering from headaches, facial pain, nasal obstruction, recurrent nose-bleeds, and crusting, as well as experiencing foul odors and frequent drainage and debris from the right side of his nose. In the physician's opinion, Petitioner had extensive recurrent respiratory papillomatosis which involved the nasal floor, septum and lateral wall, as well as the nasopharyngeal surface of the soft palate. He noted that Petitioner had been treated for sinusitis "a few times peri-operatively", and was expected to have repeated sinus infections.

d. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards advised the Board, in effect, that there is no direct VA code for Petitioner's condition, this requiring rating by analogy to another listed condition. The code employed by the PEB in this case accurately reflected the degree of industrial impairment suffered by Petitioner as a result of his condition while on active duty. He noted that there were other rating options, such as that chosen by the VA. The VA rating decision, however, was based on subjective symptoms that, for the most part, were not of sufficient clinical significance as to warrant note in Petitioner's active duty health record or medical boards. The rating decision analogized Petitioner's condition to the far more clinically serious sinusitis complicated by osteomyelitis. Another possible rating could be by analogy to allergic rhinitis at 30%. This is a distinctly different and more impairing clinical entity. The combination of allergic rhinitis and polyps, if sufficiently impairing to result in a PEB finding of unfitness, could be an understandable consideration in Petitioner's case. This case presents a complicated situation. A careful comparison of his health record with the criteria for referral to the PEB and the specific wording of the VA codes still favors the PEB finding, but it remains a judgment call since the rating is by analogy. The Director recommended that no modification of Petitioner's record be made.

#### CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (2), the Board concludes that Petitioner although Petitioner's condition as described by Dr. McF... on 9 October 1999, was significantly more severe prior to his discharge than indicated by the 10% rating he was assigned by the PEB. Accordingly, the Board concludes that it would be in the interest of justice to rate the condition at 30% by analogy to allergic rhinitis, and to place his name on the Temporary Disability Retired List.

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 discharged by reason of physical disability on 30 November 1999.

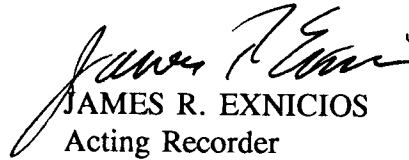
b. That Petitioner's naval record be further corrected to show that on he was released from active duty on 30 November 1999, and transferred to the Temporary Disability Retired List the following day, pursuant to 10 U.S. Code 1202, with a disability rating of 30% under VA code 6599-6522.

c. That Petitioner be afforded a periodic physical examination as soon as practicable. Current address: ~~REDACTED~~

d. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. 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. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFIEFFER  
Executive Director

Reviewed and approved:



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**JOSEPH G. LYNCH**  
Assistant General Counsel  
(Manpower And Reserve Affairs)