



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

JRE
Docket No: 7675-00
2 October 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 his name was not removed from the Temporary Disability Retired List (TDRL) and that he was not discharged from the Navy.
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 released from active duty on 23 July 1993, and transferred to the TDRL the following day. In a letter dated 23 August 1996, he was advised by an official of the Bureau of Naval Personnel (BUPERS), that his record had been corrected to show that he did not participate in the Survivor Benefit Plan when transferred to the "Permanent Disability Retired List" (PDRL) on 24 July 1993." On 12 September 2000, he was discharged from the Navy without further entitlement to disability benefits, based on his failure to undergo a final periodic physical examination.
 - c. Petitioner contends that he never received notice to report for a final periodic physical examination. Furthermore, he assumed, based on the contents of the 23 August

1996 letter from BUPERS, that he had been transferred to the PDRL and guaranteed disability benefits for life.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board accepts Petitioner's contention that he did not receive notice to report for a periodic physical examination. In addition, it concluded that he was justified in believing that he had been permanently retired. 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 his name was not removed from the Temporary Disability Retired List and that he was not discharged from the Navy on 12 September 2000.


b. That Petitioner be afforded a periodic physical examination as soon as practicable.
Current address: [REDACTED]

c. That upon completion of the periodic physical examination, the Physical Evaluation Board make a final determination of his fitness for duty, and assign a disability rating if he is found unfit for duty.

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.

A handwritten signature in black ink, appearing to read "Robert D. Johnson". The signature is written in a cursive style with a large initial "R".

For W. DEAN PFEIFFER
Executive Director