



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

JRE
Docket No: 7701-99
11 September 2000

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) 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 when placed on the Temporary Disability Retired List (TDRL), his disability was classified as combat related.

2. The Board, consisting of Messrs. Carlsen, Pfeiffer and Tew, reviewed Petitioner's allegations of error and injustice on 8 September 2000 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. On 26 October 1995, the Physical Evaluation Board (PEB) determined that Petitioner was unfit for duty by reason of physical disability because of two conditions which were rated at a combined 30%. The conditions were not considered combat-related as defined by 26 U.S. Code 104(b)(3). He was released from active duty on 31 January 1996, and transferred to the TDRL. On 23 November 1999, the PEB confirmed the disability rating, and directed that Petitioner be retained on the TDRL. In addition, it determined that the disabilities were combat-related. His health record indicates that his disabilities resulted from injuries sustained on a combat assault course.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the action taken by the PEB on 23 November 1999, the Board finds the existence of an injustice warranting the following corrective action.

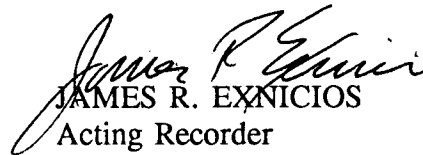
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 26 October 1995, the Physical Evaluation Board determined that his disabilities were combat-related, as that term is defined in 26 U.S. Code 104(b)(3), and that the combat-related finding was approved by the Secretary of the Navy.

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