



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

JRE  
Docket No: 7719-00  
27 February 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 record be corrected to show that he was retired by reason of physical disability, vice discharged with entitlement to disability severance pay.
2. The Board, consisting of Messrs. ensley, Mazza and Silberman reviewed Petitioner's allegations of error and injustice on 19 January 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 enlisted in the Navy on 22 March 1993. He was evaluated by a medical board on 30 May 1997, and given diagnoses of herniated nucleus pulposus, L3-L4 and L4-L5, left, status post microdiscectomy; recurrent L3-L4, L4-L5 nerve root irritation on the left; chronic myofascial syndrome of the lumbosacral spine, and low back pain secondary to the previous diagnoses. The medical board noted that he was significantly limited in his ability to perform prolonged standing, squatting, bending, stooping, kneeling and climbing type activities, as well as being exposed to extreme ranges of temperature. His clinical examination was consistent with low back pain and intermittent radiculopathy, consistent with

scarring following surgical extirpation. The potential for continued active service was felt to be nil. On 30 July 1997, the Physical Evaluation Board made preliminary findings that he was unfit for duty because of low back pain secondary to the remaining medical board diagnoses, rated at 10% under VA code 5295, as lumbosacral strain. He accepted those findings on 20 August 1997, and was discharged with entitlement to disability severance pay on 7 October 1997. On 20 January 1998, based on a review of service medical records, the Department of Veterans Affairs (VA) awarded him a 60% rating for herniated nucleus pulposus, L3-L4 and L4-L5 left, status post microdiscectomy, with recurrent nerve root irritation and chronic myofascial syndrome of the lumbosacral spine. He was examined at a VA facility on 16 June 1998, and found to be unable to sit for more than 20 to 30 minutes, or stand for more than 10 or 15 minutes. He was unable to lift more than 10 to 15 pounds. Percussion over the lumbar spine was quite painful, and he had forward and backward flexion of only 5 degrees. Lateral flexion was 10 Degrees bilaterally, and rotation was 25 degrees to the right, and 30 degrees to the left. On 8 September 1998, the VA determined that he was unemployable as of 20 February 1998. That determination was based on the results of the 16 June 1998 examination.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. In this regard, it concludes that Petitioner's back condition was productive of substantially more disability than indicated by the 10% rating assigned by the PEB, although less so than indicated by the 60% rating assigned by the VA. It concludes that it would be in the interest of justice to show that he was retired by reason of physical disability with a 40% rating, vice discharged with entitlement to disability severance pay.

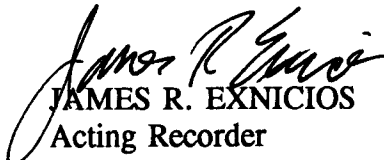
#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 8 March 1998, he was permanently retired by reason of physical disability, pursuant to 10 U.S. Code 1201, with a 40% rating under VA code 5299-5293, for status/post microdiscectomy L3-L4, L4-L5, with recurrent nerve root irritation on the left, and chronic low back pain.

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.

  
W. DEAN PFEIFFER  
Executive Director