



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

JRE
Docket No: 1151-02
7 October 2002

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 he was transferred to the Fleet Reserve, vice discharged by reason of physical disability, with entitlement to disability severance pay, on 17 March 2000.
2. The Board, consisting of Ms. LeBlanc and Messrs. Kim and Geisler, reviewed Petitioner's allegations of error and injustice on 29 August 2002 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. Although enclosure (1) was not filed in a timely manner, the Board concluded that it would be in the interest of justice to waive the statute of limitations and consider the application on the merits..
 - c. Petitioner was the subject of a medical board on 13 October 1999, and recommended for a period of limited duty which would permit him to complete 20 years of active duty service. On 8 November 1999, the Commander, Navy Personnel Command, stated that Petitioner was not eligible for limited duty, and he forwarded the medical board report to the Physical Evaluation Board (PEB) for action. On 19 January 2000, the PEB made preliminary findings that Petitioner was unfit for duty because of chronic low back pain with intermittent

incapacitating episodes, rated at 10%. A note on the PEB work card indicates that it would be best to find him unfit for duty, which would preclude his reassignment to sea duty, and that he could request permanent limited duty to complete 20 years of service. Petitioner accepted the preliminary findings of the PEB on 9 February 2000, and was discharged on 17 March 2000, with entitlement to disability severance pay. He completed 19 years 5 months and 23 days of active duty service.

d. Petitioner contends, in effect, that he was under the impression that he could not remain on active duty in a limited duty status, and the no useful purpose would be served by requesting a formal hearing. He has since learned that the outcome of his case could have changed had he pursued either of those courses of action, and he could have been retired rather than discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given Petitioner's long record of excellent service to the Navy, the circumstances of his evaluation by the PEB, which apparently found him unfit with the expectation that he would be continued on active duty, and Petitioner's apparent confusion about his options regarding the findings of the PEB, it would be in the interest of justice to correct his record to show that he transferred to the Fleet Reserve.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

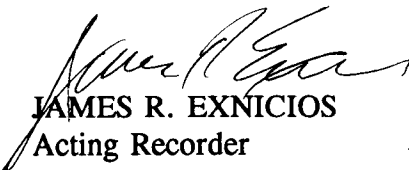
a. That Petitioner's naval record be corrected to show that he was not discharged by reason of physical disability on 17 March 2000.

b. That Petitioner's naval record be further corrected to show that he was released from active duty on 31 March 2000, and transferred to the Fleet Reserve on 1 April 2000 pursuant to the Temporary Early Retirement Authority.

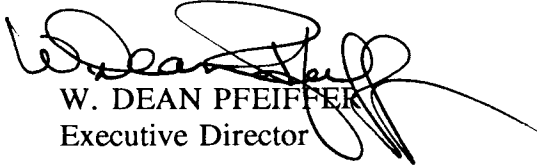
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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