



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

JRE
Docket No: 4026-01
20 February 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 his naval record be corrected to show that he was retained on the Temporary Disability Retired List (TDRL), vice discharged by reason of physical disability.
2. The Board, consisting of Messrs. Bishop, Kastner and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 7 February 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. Enclosure (1) was filed in a timely manner.
 - c. Petitioner was released from active duty on 15 July 1997, and transferred to the TDRL with a 30% disability rating for bipolar disorder, recurrent, manic type, moderate. He completed 14 years, 1 month and 10 days of active service. He underwent periodic physical examinations on 20 January 1999 and 12 July 2000. The report of the latter examination indicates that he had stopped taking Depakote and lithium because they made him sick, and he did "not need it". He reported that he was seeing a nurse practitioner about once per month. He graduated from college with magna cum laude honors, worked 12 hours per day, and drove a taxi, and he planned to move from Florida to the state of Washington to

pursue graduate studies. He maintained that he did not have a bipolar disorder, and did not need drugs. Mental status evaluation revealed no evidence of psychotic thinking. His speech was described as "slightly pressurized", and his psychomotor activity slightly increased. His affect appeared mildly elated. His mood was euthymic, and his judgment and reliability were assessed as "highly questionable". The psychiatrist who conducted the examination recommended that he be retained on the TDRL for another 18 months. On 14 November 2000, the Physical Evaluation Board (PEB) made preliminary findings that Petitioner remained unfit for duty, and that his condition was ratable at 10%. The staff of the PEB mailed the findings to him at an address in Tampa, Florida, but the letter was returned by the U.S. Postal Service with the notation "ATTEMPTED NOT KNOWN" and a label with his name and an address in New York State. The notification letter was re-mailed to the Tampa address, and received by [REDACTED]. As no response was received from Petitioner, his acceptance of the preliminary findings was presumed, and his case was finalized. He was discharged from the TDRL and the Navy on 8 February 2001.

d. Petitioner contends, in effect, that he advised the TDRL desk at Naval Hospital Jacksonville of his relocation to Utah during the summer of 2000. He never received the report of physical examination conducted on 12 July 2000 or the preliminary findings of the PEB. He believes that Department of the Navy officials discharged him improperly, without benefit of his input. His Department of Veterans Affairs (VA) records indicate that his bipolar disorder has been rated at 50% since 16 July 1997. The most recent VA rating decision available to the Board, dated 19 March 2001, indicates that Petitioner was taking medication for control of his mental disorder as of 17 August 2000. He reported excitement and anxiety over future plans, and irritability due to financial circumstances. He also reported weight loss, gastrointestinal problems, and recurring nightmares. His mood was described as hypomanic, and he fluctuated from anger to telling funny stories. He was found to be suffering from symptoms of bipolar disorder, such as impaired judgment, loss of motivation, anxiety, and mood disturbances, among others. As the evidence of record did not establish that there had been significant, sustained improvement in his condition, the 50% rating was continued by the VA.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board was not persuaded that Petitioner's condition had improved to the point that a reduction of his disability rating to 10% was warranted. It accepts his contention that he was not aware of the findings periodic physical examination conducted on 12 July 2000, or of the findings of the PEB. After reviewing all of the evidence of record, to include the VA records discussed above, the Board concludes that his discharge from the TDRL was premature; 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 he was not discharged from the Navy on 7 February 2001, and that his record be further corrected to show that his name was retained on the TDRL.

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

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