



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

JRE
Docket No: 7296-00
23 August 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 w/attachments
(2) NMC Bethesda Psychiatry ltr 18 Mar 02
(3) Dir, NCPB ltr 5220 Ser:02-08, 21 May 02
(4) 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 naval record be corrected to show that he was retired by reason of physical disability, vice discharged by reason of misconduct.
2. The Board, consisting of Ms. Moidel and Messrs. Bishop and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 1 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. Enclosure (1) was filed in a timely manner.
 - c. Petitioner enlisted in the Navy on 19 January 1994. He was evaluated by a psychiatrist on 16 August 1994, and given diagnoses of a depressive reaction, rule-out organic brain syndrome, and rule-out alcoholic fugue. The psychiatrist recommended that he undergo psychological testing to rule out an organic condition, and placed him on a trial of anti-depressant medication. He was referred for alcohol dependency screening on 22 February 1995. He was assessed as being alcohol dependent, and recommended for level III counseling and rehabilitation. On 23 February 1995, a Navy physician evaluated Petitioner,

and he was found "not mentally ill". The physician opined that Petitioner was very intelligent and needed proper leadership to excel. He saw no indication for referring him for psychological testing. He received nonjudicial punishment on 28 March 1995 for an unauthorized absence of about 20 hours duration, failure to obey a lawful order, and disorderly conduct. On 29 March 1995, a Navy physician examined him and determined he was not mentally ill. Petitioner apparently refused to undergo a formal mental health consultation and psychological testing at that time. On 17 April 1995, he received NJP for 8 specifications of failing to obey a lawful order by missing restricted man's muster. The following day, he received a third NJP, once again for violation of an order by missing restricted man's muster. On 2 May 1995, he was advised of his rights in connection with his proposed discharge under other than honorable conditions by reason of misconduct, commission of a serious offense, and a pattern of misconduct. He was offered level III in-patient alcohol rehabilitation services on 11 May 1995. He declined the offer. As Petitioner waived his right to appear before an administrative discharge board, his commanding officer forwarded a recommendation for Petitioner's discharge to the Chief of Naval Personnel (CNP) on 12 May 1995. On 22 May 1995, the CNP directed that Petitioner be discharged by reason of a pattern of misconduct, with a discharge under other than honorable conditions. He was discharged on 16 June 1995. On 2 December 1996, he was advised by the Executive Secretary, Naval Discharge Review Board, that his request for upgrade of his discharge had been denied.

d. Petitioner was hospitalized for psychiatric evaluation and treatment from 27 July to 4 August 1995, and given a diagnosis of bipolar disorder. He was later diagnosed a suffering from a psychosis, not otherwise specified, schizophreniform disorder, and schizoaffective disorder. On 10 January 2001, the Department of Veterans Affairs (VA) determined that Petitioner was "insane" when he committed the acts of misconduct which resulted in his discharge, and accordingly, that his discharge was not a bar to his receipt of benefits administered by the VA. An "insane person" is defined in 38 CFR 3.354, as one who, while not mentally defective or constitutionally psychopathic...exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (or become so antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides. Information obtained by the Board indicates the VA currently rates his mental disorder as 60% disabling.

e. In correspondence attached as enclosure (2), a panel of psychiatrists assigned to National Naval Medical Center, Bethesda, advised the Board, in effect, that there is strong evidence to support the diagnosis of schizoaffective disorder, with onset of symptoms during Petitioner's enlistment. Had the recommended psychological testing been performed, his illness might have been identified before his discharge. The behavior leading to his other than honorable discharge is better explained in this case as a decline in function associated with schizoaffective disorder than by a characterologic deficit, and may entitle him to medical benefits. In the panel's opinion, the discharge characterization should be modified to reflect

that his misconduct was likely the direct consequence of severe mental illness.

f. In correspondence attached as enclosure (3), the Board was advised by the Director, Naval Council of Personnel Boards, in effect, that although Petitioner first manifested signs of a mental disorder during his enlistment, which is sufficient for a rating under VA guidelines, the evidence does not establish that he lacked mental responsibility for the behavior which resulted in his discharge under other than honorable conditions. He noted that administrative separations due to misconduct take precedence over disability processing, and opined that Petitioner's discharge was proper. He recommended that the petition be denied.

g. A determination that a service member lacks mental responsibility requires a determination that the member, due to a severe mental disease or defect, lacks the ability to appreciate the nature or wrongfulness of his conduct.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (3), the Board concludes that Petitioner should have been retired by reason of physical disability. In this connection, it substantially concurs with the findings and recommendation of the panel of psychiatrists who prepared enclosure (2). While the Board does not believe that Petitioner lacked mental responsibility for his actions, those actions were clearly affected by his severe mental disorder. His offenses, although causing a great administrative burden to his command, were not particularly severe. The Board felt it very significant that Petitioner was not accorded psychological testing when it was initially recommended. Had that testing been conducted, his mental disorder may have been identified, and his future acts of misconduct averted.

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 misconduct on 16 June 1995.


b. That Petitioner's naval record be further corrected to show that on 15 June 1995, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of rate by reason of physical disability due to schizoaffective disorder, which was incurred while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that the disability is considered to be ratable at 30% in accordance with the Standard Schedule for Rating Disabilities in use by the Veterans Administration at the time the Secretary found Petitioner unfit, Code Number 9299-9206; and that as accepted

medical principles indicate the disability is of a permanent nature, the Secretary directed that Petitioner be permanently retired by reason of physical disability 17 June 1995, pursuant to 10 U.S. Code 1201.

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


4. 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. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER
Executive Director

Reviewed and approved: OCT 4 2002

