



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

JRE

Docket No. 08264-08

2 March 2009

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 retired by reason of physical disability.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 February 2009 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. Petitioner was released from active duty on 24 July 2001 and transferred to the Temporary Disability Retired List (TDRL) with a disability rating of 100%. Effective 25 July 2001, the Department of Veterans Affairs (VA) awarded him a combined disability rating of 100% for the loss of use of his lower extremities (100%), paresis of his right upper extremity (60%), neurogenic bladder (60%), neurogenic bowel (60%), paresis of his left upper extremity (50%), and respiratory distress syndrome

with recurrent pneumothorax (10%). As he did not report for his final periodic physical examination, his name was removed from the TDRL and he was discharged from the Navy on 15 June 2007.

c. Petitioner contends that due to the severity of his condition, he was unable to report for the required physical examination.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the severe nature of Petitioner's disabilities, the Board concludes that it would be in the interest of justice to excuse his failure to report for a periodic medical examination, and to restore his name to the TDRL. Accordingly, it finds the existence of an injustice warranting the following corrective action.

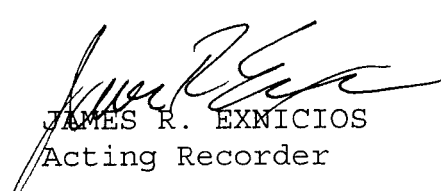
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that his name was not removed from the Temporary Disability Retired List and that he was not discharged on 15 June 2007.

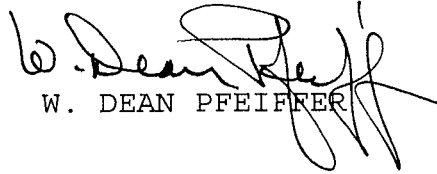
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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