



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

JRE
Docket No. 06262-09
14 August 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, vice administratively discharged.
2. The Board, consisting of Messrs. [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 August 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. Enclosure (1) was filed in a timely manner.
 - c. Petitioner served in the Navy from 14 August 1994 to 10 December 1998, when he was released from active duty and transferred to the Temporary Disability Retired List (TDRL) due to major depression with psychotic features that was rated at 30% disabling. The Department of Veterans Affairs (VA) rated his

condition at 70% effective 11 December 1998, and increased the rating to 100% effective 4 March 2002. On 20 September 2005, the President, Physical Evaluation Board (PEB) directed that Petitioner's name be administratively removed from the TDRL without entitlement to disability benefits provided by title 10, U.S. Code, chapter 61, and that he be discharged due to his failure to undergo a final periodic physical examination. On 19 July 2007, the VA determined that Petitioner was incompetent to manage disbursement of funds.

CONCLUSION:

Upon review and consideration of all the evidence of record, and resolving doubt in Petitioner's favor, the Board concludes that his failure to undergo a final periodic physical examination was most likely due to the severity of his mental disorder, and accordingly, that it would be in the interest of justice to restore his name to the TDRL.

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 from the naval service

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

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

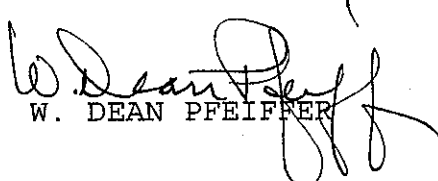
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's 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