



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

JRE

Docket No. 04546-11

3 February 2012

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

[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 his final combined disability rating was not reduced to 60% when he was permanently retired.

2. The Board, consisting of Genteman, Greene and Storz,, reviewed Petitioner's allegations of error and injustice on 2 February 2012 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 31 March 2006 and transferred to the Temporary Disability Retired List (TDRL) with disability ratings of 50% under Department of Veterans Affairs (VA) code 5199-5136 for residuals of blast injuries to his left hand, 30% under VA code 6070 for a blind eye, and 10% under VA code 5099-5003 for a condition of his right knee, for a combined rating of 70%. He

was permanently retired by reason of physical disability effective 1 February 2011 with disability ratings of 20% under VA code 5299-5219 the residuals of the blast injury to his left hand, 40% under VA code 6063 for a blind eye, and 10% under VA code 5099-5003 for a condition of his right knee, for a combined rating of 60%.

CONCLUSION:

Upon review and consideration of all the evidence of record, and resolving reasonable doubt in Petitioner's favor, the Board concludes that upon his permanent retirement by reason of physical disability in 2011, Petitioner should have retained the 50% rating under VA code 5199-5136 he was assigned when he was transferred to the TDRL in 2006, as that condition had not improved significantly during his tenure on the TDRL. Accordingly, 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 when he was permanently retired by reason of physical disability effective 1 February 2011, the residuals of the injuries to his left hand were rated at 50% under VA code 5199-5136, vice at 20% under VA code 5299-5219, and that his combined final disability rating was 70% vice 60%.

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