



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

JRE
Docket No: 2915-01
19 February 2002

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record
(3) NPC memo 5420 PERS 82B, 18 Jun 01

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, and as amended, that his naval record be corrected to show that he was transferred to the Temporary Disability Retired List (TDRL) on 1 February 2001, vice transferred to the Fleet Reserve.

2. The Board, consisting of Messrs. Schultz, Kastner and Taylor, reviewed Petitioner's allegations of error and injustice on 6 December 2001 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 evaluated by a medical board on 28 August 2000, and given a diagnosis of single seizure. On 25 September 2000, the Physical Evaluation Board (PEB) made preliminary findings that he was fit for duty under the presumption of fitness (PFIT) criteria. He was found PFIT because he was pending transfer to the Fleet Reserve under the high year tenure (HYT) policy, and his condition was not ratable above 40% disabling at the time the PEB considered his case. Information contained in his disability evaluation proceedings indicates that his condition would have been rated under VA code 8910 at 40%

had he not been found PFIT. He accepted the findings on 17 November 2000, and was continued on active duty. He was released from active duty on 31 January 2001, and transferred to the Fleet Reserve on 1 February 2001.

d. Navy Administrative Message (NAVADMIN) 061455Z NOV 00, SUBJ: Adjustment of E-4 and E-6 HYT Service Limits and Guidance on E-7 and E-8 HYT, provided, in part, that the service limit for Sailors serving in grade E-6 had been extended from 20 to 22 years. Petitioner contends that he attempted to reenlist to serve an additional two years, but was not accorded necessary further review by the PEB, and he was denied the opportunity to reenlist.

e. In correspondence attached as enclosure (3), the Board was advised by the Deputy Director, Retirements, Fleet Reserve and Disability Retirements, Navy Personnel Command, in effect, that as Petitioner had been found PFIT, rather than fit for duty under normal fitness criteria, he would have been eligible to reenlist only if a new medical board had been completed and forwarded to the PEB, and the PEB found him fit for duty without regard to the PFIT criteria.

CONCLUSION:

Upon review and consideration of all the evidence of record, and given the unique sequence of events which occurred in Petitioner's case, the Board finds the existence of an injustice warranting corrective action. In this regard, it notes that had NAVADMIN 061455Z NOV 00 been issued prior to the evaluation of Petitioner's case by the PEB, he would have reenlisted, or extended his enlistment. He would not have been subject to the PFIT criteria, and, in all likelihood, he would have been found unfit for duty. Accordingly, and as he was denied the opportunity to reenlist under the new high year tenure policy announced on 6 November 2000, the Board concludes that it would be in the interest of justice, as an exception to policy, to correct his record to show that he was transferred to the TDRL effective 1 February 2001.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not transferred to the Fleet Reserve on 1 February 2001.

b. That Petitioner's naval record be further corrected to show that on 30 January 2001, 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 a single seizure, 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 Petitioner has completed over eight years of active service; that the disability is considered to be ratable at 40% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number 8910; and that accepted medical principles indicate the disability is of a permanent nature, accordingly, the Secretary placed Petitioner's name on the Temporary Disability Retired List effective 1 February 2001 pursuant to 10 U.S. Code

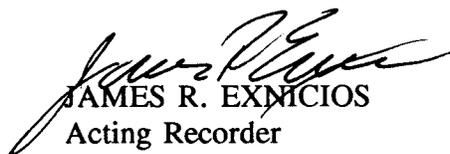
1202.

c. That Petitioner be afforded a periodic physical examination as soon as practicable.
Current address: ~~REDACTED~~

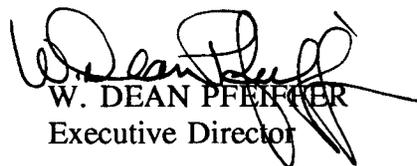
d. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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. EXMICIOS
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