



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

JRE
Docket No: 6988-98
23 August 1999

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 he be restored to the Temporary Disability Retired List (TDRL).

2. The Board, consisting of Messrs. Bartlett, Ensley and Schultz, reviewed Petitioner's allegations of error and injustice on 19 August 1999 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 24 March 1995 and transferred to the TDRL because of a mental disorder. On 25 April 1997, the President, Physical Evaluation Board, advised the Chief of Naval Personnel that Petitioner's entitlement to retired pay had been terminated, and that he would be administratively removed from the TDRL because of his failure to report for a final periodic physical examination.

d. Petitioner has submitted evidence which indicates that during the period from June 1996 through the present, he has been incarcerated awaiting trial and/or confined to a state mental institution, and that he would remain so confined for several more years or perhaps longer as a result of being found not guilty by reason of insanity of a serious offense.

Petitioner maintains that he has no recollection of being notified of a scheduled periodic physical examination. He continues to suffer from a major mental disorder, with psychotic features.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's failure to report for a final physical examination should be excused based on his severe mental disorder. Accordingly, Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that his entitlement to retired pay while serving on the Temporary Disability Retired List was not suspended, and that he was not removed from the Temporary Disability Retired List or discharged from the Navy.

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

c. That he be accorded a final periodic physical examination as soon as possible, current address: Central State Hospital, Building 96, Post Office Box 4030, Petersburg, VA 23803.

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
Executive Director