



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

JRE
Docket No: 5543-98
13 September 1999

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

Subj: FORMER A [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) NCPB ltr 5420 Ser: 99-46, 26 Jul 99
(3) 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 separated or retired by reason of physical disability.
2. The Board, consisting of Ms. Newman and Messrs. Lightle and Rothlein, reviewed Petitioner's allegations of error and injustice on 26 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. In correspondence attached as enclosure (2), the Director, Naval Council of Personnel Boards, expressed the opinion that at the time of Petitioner's release from active duty in 1998, he was unfit by reason of physical disability rated at 20%. Accordingly, he recommends that Petitioner's naval record be corrected to show that he was discharged with entitlement to disability severance pay.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), 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 on 22 February 1998, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of his rate by reason of physical disability due to pseudoarthrosis, central C6/7 and foraminal stenosis with radiculopathy, 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 the disability was incurred in the line of duty after 14 September 1978; that the disability is considered to be ratable at 20% 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 5299-5200; and that the Secretary directed that Petitioner be discharged by reason of physical disability with entitlement to severance pay effective 23 February 1998 pursuant to 10 U.S. Code 1203.

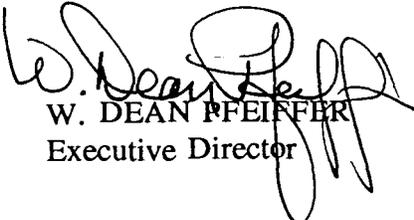
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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
Executive Director