



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

[REDACTED]
Docket No: 7408-16

MAY 07 2017

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

Subj: REVIEW OF NAVAL RECORD ICO
FORMER MBR [REDACTED] XXX-XX [REDACTED] USMC

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

Encl: (1) DD Form 149 w/attachments
(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 the applicable naval record be corrected to place him on the Permanent Disability Retirement List.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 April 2017 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. Petitioner was placed on the Temporary Disability Retirement List (TDRL) on 30 July 2007 for left shoulder weakness status post thoracotomy and recurrent left pleural effusion. He later was continued on the TDRL in 2010 after undergoing a periodic TDRL examination.

c. On 25 September 2012, Commandant Marine Corps requested Petitioner's administrative removal from the TDRL for failing to follow TDRL regulations. This led to his removal by President, Physical Evaluation Board in October 2012.

d. Regarding Petitioner's request for a personal appearance, the Board determined that a personal appearance with or without counsel would not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered his case based on the evidence of record.

Subj: REVIEW OF NAVAL RECORD ICO

FORMER MBR [REDACTED]

XXX-XX- [REDACTED]

USMC

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following partial corrective action.

The Board concluded that an injustice would occur if Petitioner was not provided another opportunity to be medically evaluated in order for the PEB to conduct a final adjudication in his case. The seriousness of his conditions, specifically the massive hemoptysis and pulmonary restriction indicated in his 2009 examination, led the Board to determine that the interests of justice require that the Petitioner be given one more opportunity to appear for a final physical examination. The Board did not find that the PEB or Marine Corps committed any error in the case.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was reinstated to the Temporary Disability Retirement List effective the date of this letter. The sole purpose of his reinstatement is so he may undergo a physical examination and have the Physical Evaluation Board make a final determination of his disability status in accordance with Title 10, U.S. Code, Section 1210.

b. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. It is certified that 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.

[REDACTED]
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.

[REDACTED]
Executive Director