



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

[REDACTED]  
Docket No: 7433-16

AUG 10 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) Director CORB ltr 5220 CORB: 002 of 16 May 2017

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 disability retirement list.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 July 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. In addition, the Board considered the advisory opinion contained in enclosure (2); a copy of which was provided to the Petitioner for comment.
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 entered active duty with the Marine Corps in March 2003 as a Warehouse Clerk and deployed to a combat zone where he was exposed to six Improvised Explosive Device explosions.
  - c. In February and March 2007, Petitioner was medically screened for separation and cleared to be discharged despite complaints of Post-Traumatic Stress Disorder (PTSD) symptoms and a notation from the medical provider that he could not rule out mild Traumatic Brain Injury (TBI). He was discharged on 17 March 2007.
  - d. The Department of Veterans Affairs rated Petitioner for a number of service connected conditions effective 11 May 2011 including Individual Unemployability (100%), TBI (40%), PTSD (70%), shrapnel wounds left thigh (40%), scars left thigh (10%), bilateral tinnitus (10%), lumbar strain (10%), and shrapnel wound left forearm (10%).

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

e. Director, CORB provided an advisory opinion in enclosure (2) that recommended no relief based on a lack of evidence Petitioner was suffering an occupational impairment due to TBI or PTSD. He also relied upon the comments made during Petitioner's medical separation screening that states Petitioner was "doing very well" and could perform the duties of a civilian police officer despite his symptoms.

f. BCNR denied Petitioner's previous application on 27 August 2015 based on the application of the statute of limitations. His case was reconsidered based on the interests of justice.

## 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 majority determined that the Petitioner was suffering from TBI and PTSD at the time he was discharged from the Marine Corps and was unfit for continued naval service. The Board relied upon the medical opinion provided by the Navy that TBI could not be ruled out prior to his discharge and Petitioner's post-discharge history of occupational impairment. The Board concluded sufficient evidence exists to support a change to Petitioner's record due to error and injustice.

## RECOMMENDATION

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

Petitioner was placed on the Temporary Disability Retirement List for Traumatic Brain Injury, VASRD 8045, with a 40% disability rating and Post-Traumatic Stress Disorder, VASRD 9411, with a disability rating of 70% effective 17 March 2007. A final Periodic Physical Examination will be conducted in order for the Physical Evaluation Board to make a final determination of his disability status in accordance with Title 10, U.S. Code, Section 1210.

No other relief be granted.

A copy of this Report of Proceedings will 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.

[REDACTED]  
Recorder

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

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]

Executive Director

Reviewed and Approved ~~/Disapproved~~

[REDACTED]

8/28/2017