



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

[REDACTED]
Docket No: 7984-16

APR 08 2017

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

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

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 23 March 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 suffered a Traumatic Brain Injury (TBI) as a result of being struck by a vehicle on 24 January 2008. He was found unfit by the Physical Evaluation Board on 6 May 2008 and rated at 100% resulting in his placement on the Temporary Disability Retirement List (TDRL) on 21 August 2008.
 - c. Subsequent to his placement on the TDRL, Petitioner was unable to manage his personal affairs due to his TBI condition and required family assistance. He was moved multiple times to different residences to ensure he received care. As a result of his moves and inability to manage his affairs, he never received or inquired about periodic examinations.
 - d. Petitioner's pay was stopped on 21 August 2013 after the statutory period had run and he was later removed from the TDRL. He continued to be rated 100% disabled by the Department of Veterans Affairs since his placement on the TDRL and designated as an individual who in unable to manage his personal affairs.

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e. In regard to Petitioner's request for a personal appearance, the Board determined that a personal appearance was not necessary and considered the case based on the evidence of the record.

CONCLUSION

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

The Board concluded that Petitioner failed to comply with TDRL regulations by not appearing for periodic examinations due to no fault of his own. The Board determined he was unable to manage his affairs and not responsible for his inaction with regard to his TDRL responsibilities. The Board also concluded that he was still 100% disabled for his TBI condition warranting his placement on the Permanent Disability Retirement List.

RECOMMENDATION:

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

a. Petitioner was placed on the Permanent Disability Retirement List for Severe Traumatic Brain Injury, VASRD 8045-9304, with a 100% disability rating, effective 20 August 2013.

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