



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

[REDACTED]  
Docket No: 6238-20  
Ref: Signature Date

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) Psychiatric Advisor CORB letter 1910 CORB: 002 of 13 October 2021  
(3) Director CORB letter 1910 CORB: 001 of 13 Oct 2021

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to place him on the disability retirement list for unfitting conditions of his lower left leg, shoulder, back, and Post-Traumatic Stress Disorder (PTSD).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 29 December 2021 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, relevant portions of 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 entered active duty with the Navy in August 2000 and served as an Aviation Boatswain Mate. He suffered several injuries throughout his period of active duty that received treatment including a back injury, lower leg and head injuries, as well as trauma from a flight deck incident and motor vehicle accident that led to mental health symptoms.

c. Petitioner's back injury occurred in 2002 when he strained his back while lifting a door. He was evaluated, prescribed pain medication, and placed on light duty until he was able to resume full duty status. In 2013, Petitioner was again evaluated for back pain. Radiology reports documented early degenerative changes to his L3-L4 but found no disc space narrowing. Eventually, Petitioner's back condition was noted on his separation physical but determined to be asymptomatic at the time. As a result, it was determined not to be disqualifying for separation.

d. Petitioner was seen for shoulder pain in 2010. At the time of his evaluation, he was prescribed medication and released. He was again seen for shoulder pain in 2013. Radiology reports found no remarkable conditions related to his shoulder. However, Petitioner reported an inability to perform pull-ups and push-ups or bear weight overhead. On his separation physical, Petitioner was diagnosed with

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

possible shoulder bursitis that was treated for pain medication but the condition was determined not to be disqualifying for separation.

e. Petitioner was seen for mental health symptoms on various occasions in 2013. He reported residual effects of his 2006 motor vehicle accident and a 2001 flight deck mishap. In each of his evaluations, he was diagnosed with Anxiety Disorder but determined to be psychologically fit for full duty. His mental health condition was noted on his separation physical but was determined not to be disqualifying for separation.

f. Petitioner's left leg condition originated in a motor vehicle accident in 2006. He suffered nerve injury that was diagnosed as a Peripheral Nerve Injury and resulted in his placement on light duty while he recovered. Eventually, he was returned to full duty in November 2007 as part of a periodic health assessment. However, Petitioner continued to suffer from pain symptoms as a result of his left leg injury and was eventually placed on limited duty in 2012. He was returned to full duty status in December 2012 but continued to report pain symptoms. As a result, a medical board documented his continued pain symptoms in June 2013. Petitioner, however, executed a waiver of disability evaluation processing in July 2013 and was discharged for condition not a disability on 9 August 2013. Petitioner argued that he waived his disability processing rights without proper counseling.

g. Post-discharge, the Department of Veterans Affairs (VA) rated Petitioner for PTSD (30%), left shoulder impingement syndrome (10%), intervertebral disc syndrome (10%), and left lower extremity peroneal nerve injury (10%). His disability rating for PTSD was increased to 100% in 2021.

h. In correspondence attached at enclosures (2) and (3), the office having cognizance over Petitioner's request to be placed on the disability retirement list determined that the evidence supports partial relief. The enclosures state that Petitioner should be found unfit for Paralysis of External Popliteal Nerve and assigned a 10% rating consistent with the assigned VA rating for the condition. The enclosures concluded that even though Petitioner waived his disability processing rights, irregularities associated with the waiver merits the recommended partial relief. Further, the enclosures opine that insufficient evidence exists to find Petitioner's back, shoulder, and PTSD conditions were separately unfitting. Petitioner provided rebuttal evidence arguing with the conclusion that his back, shoulder, and PTSD conditions were not unfitting.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. In this regard, the Board concurred with the Advisory Opinions at enclosures (2) and (3). Specifically, the Board determined that the preponderance of the evidence supports finding Petitioner unfit for his leg condition with a disability rating of 10% resulting in a change to his narrative reason for separation to disability. In making their findings, the Board relied on the 24 June 2013 medical board report that documented Petitioner's chronic pain symptoms due to his left lower extremity peroneal nerve injury and the VA rating assigned to his condition effective 10 August 2013. While the Board did not find evidence to support Petitioner's claim that his waiver of Disability Evaluation System processing was made under duress without proper counseling, they concluded it was in the interests of justice to overlook his waiver based on unusual circumstances involved in the chronology of events leading to its execution.

Despite the Board's decision to find Petitioner unfit for continued naval service due to his left leg condition, the Board concluded the preponderance of the evidence does not support a similar finding for his left shoulder, back, or PTSD conditions. In making this finding, the Board again substantially concurred with the advisory opinions that the evidence does not establish that these conditions rendered

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

Petitioner unable to perform his duties. The Board noted that none of Petitioner's medical providers felt these other conditions merited a referral to a medical board or placement on limited duty. In addition, the Board considered that Petitioner was found fit for separation despite his medical history. In the Board's opinion, this medical evidence supports their finding that insufficient evidence of unfitness exists regarding these other claimed disability conditions. While the Board considered Petitioner's rebuttal arguments to the advisory opinions, they were not persuaded. The Board agreed the evidence showed some degree of impairment related to Petitioner's shoulder but concluded it did not create a sufficient occupational impairment to warrant a finding of unfitness. Unlike Petitioner's chronic pain issues with his leg, an inability to lift certain heavy objects for a prolonged period of time or fire certain weapons, by itself, does not support a finding of unfitness since the inability to perform those specific activities did not necessarily prevent Petitioner from performing the duties of his office, grade, rank or rating. Regarding Petitioner's back and PTSD conditions, the Board noted that his back was asymptomatic at the time of his separation and he was found psychologically fit for duty by his medical providers after each evaluation. The fact the VA determined these disability conditions qualified for a service connected disability rating did not convince the Board Petitioner was unfit for those conditions since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated.

#### RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by finding Petitioner unfit for Peroneal Nerve Injury (Neuralgia), VASRD Code 8521, at 10% effective 9 August 2013. Petitioner's condition was not the result of a combat-related injury. Petitioner will be issued a new DD Form 214 consistent with this change to his record.

4. 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.

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 Regulation, 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.

1/6/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]