



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

[REDACTED]  
Docket No: 1549-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] [REDACTED]  
[REDACTED] USMC

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

Encl: (1) DD Form 149 w/attachments  
(2) Psychiatric Advisor CORB ltr 1910 CORB: 002 of 6 Jan 22  
(3) Director CORB ltr 1910 CORB: 001 of 6 Jan 22

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 by placing him on the disability retirement list.

2. The Board, consisting of [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 17 February 2022 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. In addition, the Board considered an advisory opinion (AO) that was provided to the Board in enclosure (2) along with an endorsement to the AO in enclosure (3).

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider his/her case on its merits.

c. The Petitioner enlisted in the Marine Corps and commenced a period of active duty on 18 January 2005. According to the AO, "[a]fter an initial period of right knee pain and surgical treatment, the Applicant was found fit by an Informal Physical Evaluation Board (IPEB) on 1 Oct 2007 for Persistent Anterior [Right] Knee Pain Despite Arthroscopic Debridement And Lateral Release With Proximal Soft Tissue Advancement."

d. From 4 January 2008 to 3 August 2008, the Petitioner deployed in support of Operation Iraqi Freedom. According to the AO, the Petitioner, "sustained a right knee injury suspicious for

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a meniscal tear on 3 July 2008 and later underwent a right knee arthroscopy and chondroplasty” after he returned from deployment.

e. According to the AO, “the Petitioner received a “right knee arthroscopy and chondroplasty” on 21 January 2009. On 11 January 2010, the Petitioner was evaluated by a physician who stated, “[a]fter reviewing patient’s notes and imaging studies, pt is recommended for administrative separation. This Marine, as much as he wants to stay in, can’t function doing regular activities required of him. Ortho surgeon has stated that he is not a surgical candidate.” On 16 February 2010, the Petitioner was advised that he was being processed for administrative separation due to Patellofemoral Syndrome, a condition, not a disability, and on 21 April 2010, he was so discharged.

f. According to enclosure (3):

The Applicant incurred Right Knee Chondromalacia during the course of active service. He required an initial right knee arthroscopy followed by referral to the Physical Evaluation Board resulting in a fit finding (1 October 2007). He experienced a recurrence of the condition during deployment in 2008, followed by a second arthroscopy and chondroplasty. After a postoperative course of physical therapy, the Applicant’s persistent right knee pain interfered with the “regular daily activities required of him,” per one evaluating clinician. However, the Applicant was erroneously administratively separated for a Condition Not a Disability, contrary to policy which defines compensable disabilities based on their inclusion within the Veterans Administration Schedule for Rating Disabilities. In 2011, the Secretary of Navy issued clarifying direction based on Section 534 of the 2011 National Defense Authorization Act which restricts the involuntary administrative separation of personnel previously found fit by a PEB for the same condition. The proper course of action for such a circumstance is resubmission of the case to the PEB. Correction of the error in the case of [Petitioner] would result in the following:

Unfit for RIGHT KNEE CHONDROMALACIA, VA Diagnostic Code 5260, rated at 10%, not combat related (NCR), non-combat zone (NCZ); stable; separation with disability severance pay.

g. Petitioner was provided enclosures (2) and (3) for comment and provided no rebuttal evidence.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board concurred with the findings of the AO, and determined that the Petitioner was erroneously administratively separated for a Condition Not a Disability. The Board concluded that Petitioner should have been referred to the Disability Evaluation System and found unfit for his right knee condition with a disability rating of 10% based on his April 2010 VA rating of 10% for Limited Flexion of Knee. Based on this finding,

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the Board concluded insufficient evidence exists to place Petitioner on the Disability Retirement List since his disability rating for his unfitting condition is less than 30%.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by reflecting that, while he was on active duty, he was found Unfit for RIGHT KNEE CHONDRIMALACIA, VA Diagnostic Code 5260, rated at 10%, not combat related (NCR), non-combat zone (NCZ); stable; separation with disability severance pay.

That Petitioner be issued a DD Form 215 Correction to his DD Form 214 Certificate of Discharge or Release from Active Duty, reflecting Disability, Severance Pay, Not Combat Related narrative reason for separation, JEB SPD code, and

That the Defense Finance and Accounting Service (DFAS) complete an audit of Petitioner's records to determine any pay, allowances, or benefits that Petitioner may be entitled to as a result of the changes to his naval record resulting from this record of proceedings.

That no other changes be made to Petitioner's 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.

3/11/2022

[REDACTED]

Deputy Director

[REDACTED]