



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

[REDACTED]  
Docket No: 1780-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD IC [REDACTED],  
[REDACTED] USMC

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

Encl: (1) DD Form 149  
(2) Medical Advisor CORB letter 1910 CORB: 002 of 18 January 2022

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.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 January 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 the 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 Marine Corps in July 2001. He was originally diagnosed with Ankylosing Spondylitis in 2005 after reporting cervical/lumbar spine pain symptoms and referred to the Physical Evaluation Board (PEB) but found fit for active duty after agreeing to change his Military Occupational Specialty. However, he was again referred to the PEB in 2009 after being deemed non-deployable due to his required medication for his Ankylosing Spondylitis. After an initial PEB finding of unfitness for continued naval service, the Department of Veterans Affairs (VA) proposed a 10% rating for Petitioner's Ankylosing Spondylitis after rating only his lumbar spine. The PEB adopted the proposed VA rating in August 2010 and Petitioner was discharged on 29 November 2010 with severance pay.

c. Post-discharge, the VA assigned Petitioner a 10% disability rating for his Ankylosing Spondylitis of his lumbar spine. Thereafter, Petitioner filed a series of Board of Veterans' Appeals cases contesting his ratings including his Ankylosing Spondylitis rating. Eventually, in October 2020, the VA assigned a separate rating of 30% for Petitioner's cervical spine Ankylosing Spondylitis.

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d. In correspondence attached at enclosure (2), the office having cognizance over Petitioner's request to be placed on the disability retirement list determined that the evidence supports relief. Enclosure (2) states that the medical evidence during Petitioner's active duty service supports a finding that he was unfit due to cervical and lumbar Ankylosing Spondylitis. Therefore, "given the inextricable physiological linkage between the effects of the condition on different spinal levels (all based on Ankylosing Spondylitis), Ankylosing Spondylitis, Cervical Spine is considered unfitting via combined effect." Enclosure (2) ultimately recommends assigning a 30% rating to Petitioner Ankylosing Spondylitis Cervical Spine condition resulting in a combined 40% PEB rating when considered with his original Ankylosing Spondylitis Lumbar Spine rating of 10%.

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board substantially concurred with enclosure (2) and concluded that the preponderance of the evidence supports placing Petitioner on the Permanent Disability Retirement List with a combined rating of 40% based on a finding that the VA should have rating his cervical and lumbar Ankylosing Spondylitis conditions separately.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by placing Petitioner on the Permanent Disability Retirement list with a combined disability rating of 40% for HLA-B27 ANKYLOSING SPONDYLITIS WITH EROSIIVE SACROILITIS AND RESULTANT LOSS OF RANGE OF MOTION OF THE LUMBAR SPINE, VASRD Code 5240 (10%) and HLA-B27 ANKYLOSING SPONDYLITIS OF THE CERVICAL SPINE, VASRD Code 5240 (30%) effective 30 November 2010. Neither disability condition was incurred in a combat zone or combat-related. Petitioner will be issued a new DD Form 214 reflecting his placement on the Permanent Disability Retirement List.

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.

1/29/2022

[REDACTED]  
Deputy Director  
[REDACTED]