



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

[REDACTED]
Docket No: 2208-21
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] USN,
[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Psychiatric Advisor, Secretary of the Navy, Council of Review Boards (CORB) ltr
1910 CORB: 002 of 8 February 2022
(3) Director, CORB ltr 1910 CORB: 001 of 8 February 2022

1. Pursuant to the provisions of the reference, 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 either being reenlisted in the Navy with constructive service credit to when his physical evaluation board (PEB) found him fit for duty and removed him from the temporarily disabled retired list (TDRL); or, in the alternative, medically retired from active service effective April 30, 2012.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 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, as well as the enclosure (2) advisory opinion (AO) of a qualified medical professional, and the enclosure (3) endorsement of the AO.

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 Navy and commenced a period of active duty on 31 October 1996.

d. On 28 Apr 2009, the Petitioner was found unfit by an Informal Physical Evaluation Board

(IPEB) for Major Depressive Disorder, Recurrent, Moderate and a contributing but not independently unfitting condition of Anxiety Disorder Not Otherwise Specified, rated at 30% under VA Code 9434, and placed on the Temporary Disability Retired List (TDRL). On 9 March 2012, the Petitioner received a periodic physical examination and he was found fit to return from temporary retirement on 6 April 2012. On 8 May 2012, Commander, Navy Personnel Command (NPC), wrote to Petitioner explaining his options upon being found fit from the TDRL, which were:

You may be reenlisted in the Navy service in the grade permanently held at the time your name was placed on the Temporary Disability Retired List, provided that: (a) your physical condition has remained essentially the same as it was at your last evaluation; (b) you are qualified in all respects; and (c) you consent to reenlistment . . .

If you are found not physically qualified, the via addressee is required to forward the MEPS physical to Commander, Navy Recruiting Command . . . and request a waiver of physical qualification for reenlistment.

e. In accordance with the correspondence from NPC, the Petitioner sought to reenlist in the Navy Reserve. Upon receiving his application to reenlist, Navy Recruiting Command (NRC) determined that further processing of Petitioner's enlistment application was not warranted due to his history of OCD, insomnia, PTSD, degenerative disc disease at L5-S1, supraventricular tachycardia, recurrent epididymitis, and a hiatal hernia with GERD. Accordingly, the Petitioner was precluded from reenlisting in the Navy Reserve due to medical conditions despite having been released from the TDRL after having been found fit for duty.

f. To assist it in evaluating the issues in the Petitioner's case, the Board obtained the enclosure (2) AO, with its enclosure (3) summary endorsement. The AO is considered favorable to the Petitioner, and explains that the evidence supports that the Petitioner was fit, as found by the PEB. Further, the AO found that NRC precluded him from reenlisting without a MEPS exam based upon the "mere presence of conditions that, upon review of the clinical record, existed while the service member was previously on active duty but had not materially changed and did not interfere with his ability to safely and effectively fulfill the responsibilities" of his rate. The AO concluded that, pursuant to Navy Manual of Medicine 15-29, the conditions for which the Petitioner was precluded from reenlisting are to be classified as "not considered disqualifying" and should not have been an obstacle to the Petitioner's reenlistment process.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board concurred with the findings of the AO. The Board observed that the Petitioner was considered fit for service and removed from the TDRL, and then precluded from reenlisting based on conditions that existed during his prior service and which were not considered unfitting. The Board determined that, in order to correct his error, the Petitioner should be placed on the Permanent Disability Retirement List with a 30% rating, which is the rating level that he had while he was on the TDRL.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
[REDACTED]

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 the below disability conditions and placed on the Permanent Disability Retirement List, with a combined rating of 30%, effective 30 April 2012:

Major Depressive Disorder, Recurrent, Moderate and a contributing but not independently unfitting condition of Anxiety Disorder Not Otherwise Specified, rated at 30% under VA Code 9434

That Petitioner be issued a new DD Form 214 Certificate of Discharge or Release from Active Duty, reflecting Permanent Disability Retired List, Not Combat Related narrative reason for separation, and JEB SPD code.

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

3/23/2022

[REDACTED]

Deputy Director

[REDACTED]