



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

[REDACTED]  
Docket No: 2210-21  
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] XXX XX [REDACTED] USMC

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 31 January 2022  
(3) Director, CORB ltr 1910 CORB: 001 of 31 January 2022

1. Pursuant to 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 finding that his physical condition of right leg radiculopathy be considered an unfitting condition and he be placed on the temporary disabled retired list (TDRL) to allow for appropriate evaluation.
2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 March 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.
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 active duty on 11 August 2003. On 22 April 2015, he was evaluated by a Physical Evaluation Board (PEB) for Lumbar Degenerative Joint Disease status-post Microdiscectomy for Footdrop with Postlaminectomy Syndrome. The PEB found the Petitioner unfit for Low Back Pain Due to Lumbar DJD s/p L5 Hemilaminectomy with Postlaminectomy Syndrome. As a result of the PEB, the Petitioner was

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issued a disability rating of 20% under VA Code 5242- 5243 (Intervertebral Disc Syndrome) due to this unfitting condition.

d. On 30 October 2015, the Petitioner was separated due to a disability, with severance pay based on the 20% disability described above.

e. The Petitioner contends that the PEB in his case failed to take into account an additional disability condition associated with a back condition, his right leg radiculopathy. He further states that this condition was diagnosed by the Department of Veterans Affairs as Right leg, Radiculopathy (Sciatic Nerve) (claimed as numbness / tingling) and rated at 60% in the Integrated Disability Evaluation System (IDES) decision.

f. In connection with reviewing this petition, the Board reviewed the advisory opinion (AO) contained in enclosure (2) and the AO endorsement contained in enclosure (3). Enclosure (3) includes a succinct summary of the AO<sup>1</sup> and recommends granting the requested relief. The AO also noted that, although the Petitioner requested placement on the TDRL, both of his conditions were rated by the VA on 31 October 2015 as part of the IDES process. Thus, according to the AO, based on the Petitioner's current stability of ratings, placement on the permanent disability retirement list (PDRL) is warranted. This results in a combined Department of the Navy disability rating of 70%.

## 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, and determined that the condition for which the Petitioner was separated should have been considered as two independent conditions, as set forth in the Recommendation below.

## 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 70%, effective 31 October 2015:

RIGHT LEG, RADICULOPATHY (Sciatic Nerve), VA Diagnostic Code (DC) 8520, rated at 60%,

LUMBAR DEGENERATIVE JOINT DISEASE WITH POST LAMINECTOMY SYNDROME STATUS PORT L5 HEMILAMINECTOMY, VA DC 5242-5243, rated at 20%

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<sup>1</sup> According to enclosure (3): The evidence shows the condition referred by the Medical Evaluation Board, Lumbar Degenerative Joint Disease status-post Microdiscectomy for Footdrop with Postlaminectomy Syndrome, encompassed both lumbar spine and associated radicular symptoms. The condition should have been considered as two independent conditions, similar to the Veterans Administration (VA) assignment of ratings. Instead, only Lumbar Degenerative Joint Disease, rated based primarily on lumbar range of motion limitation, was adjudicated.

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[REDACTED] XXX XX [REDACTED] USMC

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

Signed by: [REDACTED]