



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

█  
Docket No: 2517-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █  
█, XXX XX █ USN

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

Encl: (1) DD Form 149 w/attachments

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 reopen his Physical Evaluation Board (PEB) case to allow him to submit a one-time reconsideration request to the Department of Veterans Affairs (VA).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 29 April 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 service with the Navy in March 2017 and commissioned as an officer after completing officer training. On 3 September 2020, a medical board referred Petitioner to the PEB for Ulcerative Colitis. The VA proposed a 10% disability rating on 22 October 2020. The PEB found Petitioner unfit for continued naval service for his condition on 11 December 2020 and adopted the proposed VA rating of 10%. Petitioner subsequently requested a formal PEB hearing and one was scheduled for 16 March 2021. The day prior to his formal hearing, Petitioner decided to submit a VA Reconsideration Request (VARR) in lieu of a formal PEB hearing. He emails his assigned Integrated Disability Evaluation System (IDES) Counsel who, in turn, informs the PEB on 16 March 2021. IDES counsel subsequently requests additional time to submit the VARR and is granted one additional day by the PEB. On 19 March 2021, the PEB informs IDES Counsel that they have not received the VARR or election of rights form. At that point, the IDES Counsel informs the PEB that he submitted the VARR the previous day and resubmits it without an accompanying election of rights form. The PEB subsequently finalizes

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[REDACTED], XXX XX [REDACTED] USN

Petitioner's PEB case on 25 March 2021 without submitting the VARR to the VA since an election of rights forms was not submitted. When contacted by the IDES Counsel, the PEB simply stated their policy regarding the requirement that an election of rights form must be submitted by close of business of the day of the formal hearing. Since Petitioner failed to do so, the PEB considered the matter closed. Petitioner subsequently applied to this Board.

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board determined that the preponderance of the evidence supports reopening Petitioner's PEB case in order to allow him to submit an election of rights form and VARR. While the Board acknowledged that no error was committed by the PEB in closing Petitioner's case, they also recognized the severity of the consequences associated with the PEB decision to deny Petitioner the opportunity submit his VARR to the VA due to a failure by his IDES counsel to submit the required election of rights form. The Board found that Petitioner reasonably relied on his IDES Counsel to properly represent his interests with the PEB by submitting the required forms and should not be unduly punished for the lack of diligence by his assigned IDES Counsel. Accordingly, the Board concluded that it would be perpetuating an injustice not to reopen Petitioner's PEB case to allow him to submit his election of rights form and his VARR in order for the VA to reconsider his proposed disability rating.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by reopening Petitioner's PEB case in order to allow him another opportunity to submit his election of rights form and VARR. PEB will forward Petitioner's VARR to the VA for processing if Petitioner elects to accept the PEB findings and request VA reconsideration of his proposed disability rating.

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.

4/29/2021

[REDACTED]  
Deputy Director

Signed by: [REDACTED]