



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

[REDACTED]
Docket No. 6950-21
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]

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion, 8 Nov 22

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 granting review of his record by a medical board for an assessment of a medical retirement.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 14 November 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. Petitioner enlisted in the Marine Corps and commenced a period of active duty on 13 October 2015. On 27 March 2018, Petitioner was treated in the Naval Hospital Camp [REDACTED] ([REDACTED]) Emergency Department after he injured his back during a field exercise.
 - c. Thereafter, as described in greater detail in the advisory opinion (AO) from a qualified medical professional, enclosure (2), Petitioner received regular medical treatment throughout the remainder of his service. According to the AO, Petitioner continued to experience constant and chronic severe upper and lower back pain, reported as occurring on a daily basis. This pain continued despite the fact that he received a wide range of treatment modalities. The AO also described that, a review of the available clinical and non-clinical documentation revealed that the Petitioner had been in repeated periods of light duty, as well as two Limited Duty (LD) periods. His LD periods were implemented as a result of the findings of Medical Evaluation Board proceedings. These LD periods lasted nearly two years, during which the Petitioner was in a

non-deployable, non-overseas assignable status to include restrictions barring physical fitness and combat fitness training or evaluations.

d. The AO further stated, “[p]etitioner’s in-service diagnoses of Dorsalgia, Other Intervertebral Disc Displacement, and Fibromyalgia are well documented in his service medical record with entries for injuries to his upper and lower back as early as 2016, with documented recurrent evaluations and courses of treatment.” The AO also noted that the Petitioner’s “upper and lower back pain conditions were markedly worsened with acute injuries in March 2018.”

e. In addition, the AO disclosed that, when Petitioner was placed on his initial LD status in January 2019, the intent was to refer him to the Physical Evaluation Board (PEB) for a determination of fitness for duty. It is not clear why the Petitioner was not referred to the PEB. According to the AO:

There is no explanation, or available medical records, to explain Petitioner being found physically qualified for separation, when he had not improved in his medical condition that had rendered him unable to perform his military responsibilities in the 19 months prior to his discharge from service.

* * *

In my medical opinion, there is sufficient objective clinical evidence that had Petitioner been referred for fitness determination to the PEB, as was planned at the time of the initial LD Board, he likely would have been found unfit for Dorsalgia/Other Intervertebral Disc Displacement as most appropriately corresponding to the VASRD Disability Code 5243 (Intervertebral Disc Syndrome-disc compression/irritation of adjacent nerve roots) with a likely disability rating of 10% (painful forward flexion of thoracolumbar spine to 70 degrees with muscle spasms/localized tenderness not resulting in abnormal gait/spinal contour).

f. The AO concluded, “in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner’s contention that at the time of his discharge he was unfit for continued military service and should have been referred to the Physical Evaluation Board for evaluation for unfitness for continued military service.”

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. As described in the AO, Petitioner had apparently been recommended to be referred to the PEB upon completion of the last period of LD. The documentary evidence demonstrates that the Petitioner should have been referred to the PEB for a determination of his fitness when it became apparent that he had not improved his medical condition that rendered him unable to perform his military responsibilities in the 19 months prior to his discharge from service. Therefore, the Board determined Petitioner’s case should be reviewed by the PEB as set forth in the recommendation below.

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

RECOMMENDATION

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

Petitioner's record shall be changed to reflect he was referred to the PEB by a medical board for Dorsalgia/Other Intervertebral Disc Displacement. Within 60 days of this decision, the PEB shall commence a review of Petitioner's case to conduct a fitness determination and assignment of an appropriate disability rating, if required. Petitioner shall be afforded all of the required due process rights associated with the Disability Evaluation System, including, but not limited to, the assignment of a Physical Evaluation Board Liaison Officer.

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.

12/6/2022

