



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

█
Docket No: 7468-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER █, █,
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 be reevaluated for placement on the Permanent Disability Retirement List and have his DD Form 214 changed to reflect his paygrade of E4.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 2 December 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 active duty with the Navy Reserve in November 2005. After suffering a skull injury during his combat deployment to Afghanistan in February 2007, he underwent surgery but continued to suffer from multiple disability conditions related to a Traumatic Brain Injury (TBI). As a result, Petitioner was found unfit for continued naval service by the Physical Evaluation Board (PEB) in August 2008 for TBI with related diagnoses and was transferred to the Temporary Disability Retirement List (TDRL) after his release from active duty on 30 September 2008 with a 40% disability rating. Upon his release from active duty, Petitioner was issued a DD Form 214 that incorrectly listed his paygrade as E3. However, a DD Form 215 was issued on 1 October 2009 that corrected his paygrade to E4.

c. Post-discharge, the Department of Veterans Affairs (VA) rated Petitioner a combined 80% for multiple service connected disability conditions. On 6 February 2014, President, PEB directed Petitioner to be administratively removed from the TDRL as a result of his failure to attend a final TDRL examination. This Board previously denied Petitioner's request to be reevaluated by the PEB after he failed to explain why he did not attend his final periodic

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examination. In asking for reconsideration, Petitioner provided evidence of his current VA ratings along with medical evidence of his continued treatment of his unfitting condition. Petitioner is currently rated a combined 100% by the VA.

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 determined that no error was committed by the PEB in administratively removing Petitioner from the TDRL since it was his responsibility to attend his final periodic examination. However, the Board also determined an injustice exists in Petitioner's record that should be addressed by reinstating him to the TDRL to allow him another opportunity to attend a final periodic examination so the PEB may issue a final adjudication in his case. The Board felt Petitioner's TBI condition mitigated his failure to attend the final periodic examination and to allow him another opportunity would be in the interests of justice.

Despite the Board's decision to grant relief on the issue of reinstating Petitioner to the TDRL, they concluded his request to change his DD Form 214 to reflect the paygrade of E4 did not require any action. This determination was made based on the issuance of the DD Form 215 on 1 October 2009 that changed his paygrade from E3 to E4.

RECOMMENDATION

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

Petitioner was reinstated to the Temporary Disability Retirement List effective the date of this letter. The sole purpose of his reinstatement is so he may undergo a physical examination and have the Physical Evaluation Board make a final determination of his disability status in accordance with Title 10, U.S. Code, Section 1210. All due process rights associated with the Disability Evaluation System will be afforded to the Petitioner as part of the Physical Evaluation Board review.

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.

12/4/2021

[REDACTED]

Deputy Director

Signed by: [REDACTED]