



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

█  
Docket No. 7596-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
XXX XX █/█ USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) Petitioner's OMPF

Encl: (1) DD Form 149 w/attachments  
(2) Advisory Opinion of 28 Dec 22

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 reflect that he was placed on the permanent disability retired list (PDRL).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 23 January 2023 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. 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 the case on its merits.

b. As noted in reference (b), after serving for a period of four years in the Army Reserve, the Petitioner enlisted in the Marine Corps and commenced a period of active duty on 8 October 2022. From 29 March 2003 to 22 May 2003, the Petitioner deployed in support of operations in Iraq. From 19 June 2004 to 28 January 2005, the Petitioner deployed a second time in support of operations in Iraq. During his second deployment, the Petitioner was injured when the vehicle in which he was traveling was subject to a blast from an improvised explosive device (IED). On 27 June 2005, the Petitioner suffered a training accident when he fell from a helicopter during a fast rope exercise, which resulted in compression injuries to his spine. The Petitioner deployed to Iraq on his third deployment from 4 September 2005 to 31 March 2006. On 17 March 2006, while on his third deployment, Petitioner was injured after he stepped on a pressure-plated IED, which resulted in shrapnel wounds to his face and right arm, a contusion to his left leg, and a perforated right eardrum. As described more fully in the advisory opinion (AO) of 28 December

2022, the Petitioner received treatment for these injuries on several occasions, which included surgeries to remove shrapnel from his leg and arm.

c. On 21 August 2006, the Petitioner was evaluation by his Division Psychiatrist. According to the report of the Division Psychiatrist, the Petitioner's medical history was notable since September 2004 having deployed three times to Iraq in three years. The Petitioner reported symptoms diagnostic for post-traumatic stress disorder (PTSD) from his combat deployments, which was supported by the Petitioner's receipt of a Purple Heart Medals with gold star, a Navy-Marine Corps Commendation Medal with Combat "V," and Combat Action Ribbon (Iraq). The Division Psychiatrist noted the Petitioner was recently injured when he stepped on a pressure-plated IED and received shrapnel injuries to his face with Loss of Consciousness and a diagnosed Grade 3 concussion.

d. On 13 and 14 September 2006, the Petitioner was evaluated at a pre-separation physical. The AO provided a full description of the pre-separation physical, during his physical, the Petitioner described mental health experiences of nervous trouble, habitual stammering/stuttering, loss of memory/amnesia, frequent trouble sleeping, receiving counseling, depression or excessive worry, and evaluation/treatment for a mental health condition. He reported the treatment he received in emergency rooms and hospitalizations in Iraq as well as subsequent surgeries. The examining physician reviewed his history of hearing loss and tinnitus after IED explosions and eardrum rupture. In addition, the examining physician described the Petitioner's back pain since his fast rope injury during training. The examining physician found Petitioner physically qualified for service/separation with recommendations to follow up with Psychiatry and continue taking Zoloft and Seroquel. On 7 October 2006, the Petitioner was released from active duty and was transferred to the individual ready reserve (IRR) effective 8 October 2006. He remained in the IRR until he completed his required service, at which time he was released due to completion of his required service.

e. In his petition, Petitioner requested correction of his naval records by being placed on the permanent disability retired list (PDRL) effective at the end of his active duty service, or alternatively, after he was released from the IRR, service periods, due to his diagnosed conditions of post-concussion syndrome with headaches (TBI), PTSD, and back injuries. In support of his request, the Petitioner asserted that the fact that the U.S. Department of Veterans' Affairs (VA) awarded him service-connected disability benefits, which were effective on the day after his separation from active duty for multiple conditions. Petitioner further asserts that, while he was in the IRR, his physical condition continued to deteriorate, and, had he been evaluated medically on an annual basis while in the IRR, his medical condition would have been revealed and he would have been referred to the Physical Evaluation Board for a fitness evaluation.

f. In connection with reviewing this petition, the Board obtained the 28 December 2022 AO, enclosure (2), which was considered favorable to Petitioner. As explained fully in the AO, the AO found there was insufficient evidence of an unfitting condition during the period of Petitioner's active service. However, according to the AO, there is sufficient evidence from the Petitioner's IRR service supporting that during this period the Petitioner was unfit for military service and should have been medically evaluated for medical retirement. The AO concluded, "[h]ad he been evaluated by the Physical Evaluation Board, the post-discharge clinical evidence supports an overall disability rating of 55% (PTSD at 50% and Residuals of TBI at 10%).

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## 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. As described in the AO, adequate documentation exists that Petitioner's conditions, which were incurred during his active service, deteriorated while he served in the IRR to a level that rendered the Petitioner medically unfit for service. In reaching its decision, the Board concurred substantially with the AO. The Board differed from the AO in the form of relief to be granted. Instead of granting a specific disability rating, the Board thought it would be prudent to refer the Petitioner into the Disability Evaluation System (DES) with the assignment of a Physical Evaluation Board Liaison Officer (PEBLO) with all of the rights and responsibilities of a member in the DES. The DES will evaluate the Petitioner and make a determination of the Petitioner's fitness and assign the relevant effective date of any determination of unfitness, and make any other findings in accordance with its regular practices and its governing regulations.

## RECOMMENDATION

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

Within 60 days of this decision, Petitioner shall be invited to be referred to the DES and reviewed by the PEB for a determination of his fitness to perform the duties of his office, grade, rank, or rating at the time he served in the Marine Corps in active or IRR status. The Petitioner shall be afforded all of the rights and respect all of the responsibilities applicable to individuals within the DES, including, but not limited to, the assignment of a PEBLO.

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.

2/15/2023

Executive Director

Signed by: