



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

█
Docket No: 7630-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █
█ USMC

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

Encl: (1) DD Form 149

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 place him on the Permanent Disability Retirement List.
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 13 January 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 the 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 Marine Corps in May 2007. On 15 February 2012, the Physical Evaluation Board (PEB) found Petitioner unfit for continued naval service due to Degenerative Disc Disease of the Lumbar Spine and assigned him a 40% disability rating. He was also referred to the PEB for Lumbar Radiculopathy and Major Depressive Disorder but these conditions were determined not to be separately unfitting. Ultimately, Petitioner was released from active duty and transferred to the Temporary Disability Retirement List (TDRL) in June 2012. He was later administratively removed from the TDRL in January 2019 after failing to attend his periodic TDRL examinations.
 - c. In the years that followed Petitioner's placement on the TDRL, his Major Depressive Disorder significantly worsened and required hospitalization on several occasions. Based on Petitioner's VA ratings, it appears he was hospitalized in the months leading up to his administrative removal from the TDRL in January 2019. Currently, Petitioner possessed a 100% rating from the VA due to his mental health condition and continues to receive treatment.

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

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administratively removing Petitioner from the TDRL since it was his responsibility to attend any periodic TDRL examinations and he admitted to receiving the notifications. However, the Board also determined it would be an injustice to allow his removal from the TDRL to stand based on his severe mental health disorder that existed at the time he was required to attend his periodic examinations. Based on his statement, Petitioner did not understand the importance of failing to attend his periodic examination due to his mental health issues. The Board concluded this was supported by his VA ratings evidence that document he suffered from severe mental health symptoms related to his Depressive Disorder and required multiple hospitalizations. Therefore, the Board felt denying Petitioner the potential for retirement benefits due to his lack of diligence, exacerbated by his mental health condition, would perpetuate an injustice.

Despite the Board's finding that depriving Petitioner of a final examination and adjudication by the PEB would be an injustice, the Board felt placing Petitioner on the PDRL was not warranted at this time. In their opinion, there was insufficient evidence to adjudicate Petitioner's condition and determined a new TDRL examination was appropriate to allow the PEB to make an adjudication.

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.

1/15/2022

[REDACTED]
Deputy Director
[REDACTED]