



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

[REDACTED]
Docket No. 315-22
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
(b) Petitioner's OMPF

Encl: (1) DD Form 149 w/attachments
(2) Advisory opinion of 10 Feb 2023

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 by placing him on the Permanent Disability Retired List (PDRL) as a result of a hip condition, which he incurred during his active service.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 February 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.

b. Per reference (b), Petitioner enlisted in the Marine Corps and began a period of active duty on 27 January 2014. Starting in 2019, he commenced several visits with medical providers relating to his hip. As set forth more fully in the enclosure (2) AO, Petitioner was evaluated by orthopedic surgeons on several occasions, and his evaluations included imaging of his right hip by MRI as well as X-Rays. On 9 May 2019, Petitioner was medically evacuated to [REDACTED] for further evaluation and definitive treatment of Unspecified Sprain of Right Hip. On 5 June 2019, Petitioner was placed on a limited duty period for six months. On 15 November 2019, he was placed on a second period of limited duty.

c. Petitioner underwent a separation physical examination on 19 December 2019. The examining physician summarized Petitioner's recent medical history as "Coming off of LIMDU for R Hip Surgery (Day of Surgery 10/8/2019), working with care coordinator at

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[REDACTED] to ensure smooth transition to [REDACTED] for Physical Therapy.” The physician concluded that Petitioner was “Physically Qualified for Separation; Will Transition to [REDACTED] with help of [REDACTED].” Petitioner was released from active duty on 26 December 2019.

d. In his petition, Petitioner asserts that he was unfit for continued naval service due to Right Hip Labral Repair. Specifically, he argues that had he been referred to the Disability Evaluation System (DES), he “would have been medically retired with at least a 30 percent rating for the injury to his right hip” and that he should be awarded a medical retirement for his right hip labral repair with osteoplasty (flexion) and right hip labral repair with osteoplasty (adduction/abduction/rotation), commensurate with the post-discharge disability ratings awarded by the U.S. Department of Veterans Affairs, or, alternatively, be provided with DES processing for his service-related injury. Petitioner further asserts that at the time of his discharge from active duty, he was still in a limited duty status and unfit for military service or discharge.

e. The Board obtained the enclosure (2) AO in order to assist it in reviewing this petition. According to the AO, which was considered favorable to the Petitioner:

Though the few available clinical records indicated improvement in his post-operative condition, and the examining physician performing the Separation Physical Examination found Petitioner physically qualified for separation, there was no documentation in the available clinical or personnel records that Petitioner’s right hip condition resolved and allowed him to resume the full range of duty requirements of his rank, rate, and office prior to his discharge. Nor was there any available clinical or administrative documentation Petitioner was returned to a Full Duty status from his Limited Duty status prior to his release from active duty.

f. The AO concluded, “in my medical opinion, the preponderance of available objective clinical evidence provides greater support for Petitioner’s contention that at the time of his discharge he was on Limited Duty for a condition that rendered him unable to reasonably perform the duties of his office, grade, rank, or rating, was not physically qualified for separation, and should have been considered for referral to the DES for determination of fitness to return to full duty or be released from active 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, and determined that, prior to separation, Petitioner should have been reviewed by the Physical Evaluation Board (PEB) to determine his fitness and, if appropriate based on the findings of the PEB, a level of service disability rating. The Board determined it was not appropriate to place Petitioner directly on the PDRL, as requested by the Petitioner, without first being reviewed by the medical professionals at the PEB. Accordingly, Petitioner should be referred to the Integrated Disability Evaluation System (IDES) and reviewed by the PEB as set forth in the recommendation below.

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RECOMMENDATION

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

Within 60 days of this decision, Petitioner shall be referred to the Physical Evaluation Board for a determination of his fitness to perform the duties of his office, grade, rank, or rating during the time that he was on active duty. Petitioner shall be afforded all of the rights afforded individuals within the IDES, 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.

3/11/2023

