



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

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Docket No. 0464-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your 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 your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 16 March 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies. The Board also considered the 5 February 2023 advisory opinion (AO) from a medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 6 November 2000. You completed your initial period of active service on 11 July 2001 and remained the Marine Corps Reserve, in which you executed several periods of active duty. As described more fully in the AO, you eventually began to seek medical treatment for your hip, as well as, later, for post-traumatic stress disorder (PTSD). On 10 December 2016, your command issued a non-medical assessment (NMA), explaining:

[Petitioner's] condition impacts his work performance due to the TYPE I pain medication that was prescribed to him, which causes lack of concentration, and sleepiness. [Petitioner's] pain has him leaving the work area to walking around to alleviate pain. [Petitioner] is unable to sit, lift, stand, or walk for a long period of time.”

In addition to above noted limitations, SNM's medical condition prevents him from meeting the basic physical requirements of all Marines, including performing the CFT/PFT/MCMAP and range/swim qualifications, or standing, marching and/or walking for prolonged periods/distances. He is unable to function in a field environment or perform in an expeditionary role.

On 3 January 2017, an addendum medical report added your PTSD diagnosis to your medical evaluation board (MEB) file. On 7 February 2017, a MEB referred you to the PEB. Eventually, the PEB found that you were unfit due to hip pain with a 10% finding. In September 2017, you were discharged in accordance with the findings of the PEB.

In your petition, you request that your medical board package be remanded to the PEB for reconsideration for medical retirement based on all of the medical evidence provided. In support of your request, you contend that multiple errors were made by your chain of command, medical officer, and PEB Liaison Officer when your case was referred to the PEB for a medical board. You asserted that you were not referred for all of your unfitting conditions despite multiple requests, and that your PTSD diagnosis was ignored despite a written recommendation by a medical doctor noting that your PTSD was both chronic and severe. You further argued that the NMA completed by your chain of command improperly stated only that you were in chronic pain and required narcotic medication, but failed to evaluate the impact of PTSD on your work performance and overall mental health despite them being fully aware of your PTSD. Finally, you assert that you received only a 10% rating, which you consider to be an injustice, based on the severity of your symptoms at the time and despite your inability to improve.

In order to assist it in reviewing your petition, the Board obtained the 5 February 2023 AO. According to the AO:

Petitioner's in-service diagnoses of Left Hip Strain (with Acetabular Impingement and Labral Tear) and PTSD, Mild were well documented in his military and civilian medical records encompassing his military service, including his associated evaluations, courses of treatment, and occupational impacts. The records from the PEB documented the Board considered his Left Hip Condition (Unfitting at 10% disability rating-commensurate with VA Disability determination), as well as his PTSD condition (determined as a Class III condition) after taking into account his service health records, civilian health records, as well as the VA Disability Rating Decision (rendered as part of the Integrated Disability Evaluation System) which encompassed all service connected conditions that manifested during his military career. Though Petitioner contended his PTSD diagnosis was “ignored completely,” the diagnosis was evident in the in-service clinical records, MEB addendum, the VA PTSD DBQ, and the VA Rating Decision, which the PEB would

have reviewed. Additionally, the PEB record of proceedings indicated review of the VA C&P exams.

Finally, the fact of the PEB's classification of PTSD as a Class III condition indicates his PTSD condition was not "completely ignored" and was appropriately considered. Review of the available objective non-clinical evidence documented Petitioner successfully executed the full range of responsibilities of his rate and rank up through his military retirement, despite some physical limitations due to his medical condition. His FITREPS, including during his period of Left Hip Surgery and recovery to full duty, and following his 2006 Iraq deployment, consistently assessed him as "highly qualified," and recommended him for retention, promotion, and positions of higher responsibility. Even as his FITREPS documented his LOD status, LIMDU status, and inability to perform the PFT/CFT due to his left hip condition, he was consistently lauded for his performance as Senior Enlisted Advisor, and recommended for promotion to First Sergeant.

Petitioner was successful in his academic pursuits, completing an AS in Computers (2012), BS in Interdisciplinary Studies (2015), and a BS in Business (2016). He continued to perform in his civilian occupational field of law enforcement, though his physical limitations resulted in a change from his tactical SWAT position to a teacher/instructor position. Except for intermittent periods of light duty, and one period of Limited Duty during his Left Hip Surgery in 2012, Petitioner continued to function successfully without limitations to his full duty capacity until placement on LOD status with restrictions to his physical activities in 2016 lasting until his medical retirement in 2017.

His Commander's Non-Medical Assessment (NMA) indicated Petitioner's Hip Condition "prevents him from meeting the basic physical requirements of all Marines, including performing the CFT/PFT/MCMAP and range/swim qualification, or standing, marching, and/or walking for prolonged periods/distances" and was "unable to function in a field environment or perform in an expeditionary role."

Petitioner contended his command was aware of his PTSD condition but "failed to evaluate the impact of PTSD on my work performance and overall mental health." As part of the PEB process, the Command would have been required to provide this NMA for occupational impacts for the referred conditions specified in the MEB, specifically Left Hip Pain and PTSD. The fact the command did not comment on occupational limitations due to his PTSD condition is more indicative their assessment did not see his PTSD condition as occupationally impairing as they would have been aware of this referred condition. Regarding Petitioner's contention all his conditions that occurred during his military service, were identified by the VA, or claimed by the Petitioner were not referred to the PEB, only those conditions the MEB deemed unfitting for continued military service are referred to the PEB for determination. The MEB had access to his medical records, and had evaluated his medical conditions at the time of his referral to the PEB, in

determining which conditions were potentially unfitting and appropriate to refer to the PEB. Additionally, the PEB reviewed the VA Rating Decision documenting which conditions were granted service-connection and a disability rating (and those that were not) when determining if there were any additional unfitting conditions in the course of their deliberations.

The AO concluded, “in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that at the time of his discharge the Physical Evaluation Board (PEB) failed to consider all his unfitting conditions, to include Post-Traumatic Stress Disorder (PTSD), and that he should have been placed on the TDRL/PDRL.”

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. Upon review, the Board concurred fully with the findings of the AO. The Board found that the AO thoroughly and completely addressed each of your contentions. The Board noted that you did not respond in rebuttal to the AO, despite being provided a copy of the AO and time in which to prepare a response. In the absence of any evidence or argument contrary to the thorough analysis and evidentiary supported conclusions of the AO, the Board found insufficient evidence of error or injustice to support a change to the PEB findings in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

4/6/2023

