



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

[REDACTED]
Docket No. 771-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,
XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Advisory opinion of 28 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 her naval record be corrected by reversing the decision of the Physical Evaluation Board (PEB), which found her to be fit.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 2 March 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), the Petitioner enlisted in the Navy and commenced active duty on 16 July 2008. On 10 September 2020, the Petitioner was referred into the Integrated Disability Evaluation System (IDES) due to left knee osteochondral lesion and left knee patellar chondromalacia. On 17 September 2020, the Petitioner's command prepared a non-medical assessment (NMA), which described that Petitioner was working outside her rate and could not perform in her rating, was reported as compliant with all treatment requirements, and missed two hours a week from work for medical requirements. Further, the Commander stated Petitioner was not worldwide assignable and that her medical limitations impacted her ability to perform her duties in garrison and she was not deployable or worldwide assignable. Pursuant to the IDES process, the U.S. Department of Veterans' Affairs (VA), made its findings on 20 May 2021.

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c. On 15 September 2021, an Informal Physical Evaluation Board (IPEB) found the Petitioner to be fit. According to the IPEB, the Petitioner had confirmed diagnoses of Left Knee Patella Chondromalacia and Left Knee Osteochondral Defect, and that treatment had successfully diminished or resolved the symptoms sufficiently so that the Petitioner could perform the duties of her rate at sea, on shore or in a deployed status. Thereafter, the Petitioner sought review by a Formal Board, which was denied on 14 October 2021. On 27 October 2021, the President of the PEB issued its official notification of finding of fit to the Petitioner. On 19 May 2022, the Petitioner was separated at the completion of her required service.

d. In her petition, Petitioner requests that she be found unfit, asserting that it was error that the PEB found her fit. In support of her request, the Petitioner contends that the PEB erroneously found her fit for active duty due to the fact that, "my doctor hadn't seen me since September 2020." Petitioner stated during her continued service after the PEB found her FIT for continued service, and before her discharge from service, her condition worsened requiring "consistent knee injections because both my knees swell and fill with fluid," and she was pending "another surgery which will be in March 2022." She stated the need for surgery was indicated in her medical records contemporaneous to her active duty service.

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 (with emphasis added):

Petitioner's in-service diagnoses of Left Knee Patella Chondromalacia and Left Knee Osteochondral Defect are well documented in her service medical record. The ongoing left knee pain and experience of knee instability (described as buckling, grinding) persisted despite appropriate evaluations and treatment, to include arthroscopic surgery, leading to referral to an MEB and then the PEB.

* * *

The decisions rendered by the PEB and President, PEB appeared appropriate given the limited clinical scenario presented to them. However, Petitioner's continued clinical deterioration presented a picture of a failed response to medical treatment, and a more chronic and extensive left knee condition than was initially appreciated by the PEB.

* * *

Petitioner's continued left knee condition required increasing levels of treatment (physical therapy modalities, intra-articular joint steroid injections, and a second more intensive and comprehensive arthroscopic surgery) to address the ongoing debilitating pain and instability caused by her left knee condition, and resultant occupational impairment.

Had Petitioner been re-evaluated without the constraints of prior PEB decision and upcoming EAOS, it is very likely she would have been referred for a fitness determination for her progressing conditions of Left Knee Patella Chondromalacia

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and Osteochondral Defect and found unfit. The VA Diagnostic Code most closely approximating Petitioner's diagnoses and occupational impairment would be 5257 (Knee, Other Impairment of; Patellar Instability) at a 20% disability evaluation (A diagnosed condition involving the patellofemoral complex with recurrent instability [pain, "buckling"] after surgical repair, that requires a prescription by a medical provider for one of the following: A brace, cane, or walker).

f. The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of her discharge she was unfit for continued military service. Her level of disability at the time of discharge would have qualified her for separation from service with severance pay commensurate with her disability rating."

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, after she was reviewed by the PEB, it appears the Petitioner's knee condition continued to deteriorate, and that, had she been re-evaluated it is likely she would have been referred for a fitness determination for her progressing conditions.

RECOMMENDATION

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

Petitioner's naval record be corrected by reflecting that, while she was on active duty, she was found Unfit for the below disability condition, effective 19 May 2022.

KNEE, OTHER IMPAIRMENT OF, PATELLAR INSTABILITY, [REDACTED] 5257, rated at 20%.

That Petitioner be issued a new DD Form 214 Certificate of Discharge or Release from Active Duty, reflecting Disability, Not Combat Related narrative reason for separation, and JEB SPD code (Disability, Not Combat Related, Severance Pay).

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

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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.

4/1/2023

[REDACTED]

Executive Director
Signed by: [REDACTED]