



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

[REDACTED]
Docket No: 1539-22
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]
XXX-XX-[REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) USD Memo of 25 Aug 17 (Kurta Memo)

Encl: (1) DD Form 149
(2) Advisory Opinion of 22 Mar 23

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 granting a permanent medical retirement, or in the alternative a referral into the Disability Evaluation System (DES).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 June 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 the naval records, and applicable statutes, regulations, and policies to include reference (b).

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 enlisted in the United States Marine Corps on 17 September 2007. In February 2010, Petitioner deployed to Afghanistan; he returned early from the deployment as his command informed him that his child was being neglected. Upon his return, Petitioner completed a Post-Deployment Health Assessment and reported that he had difficulty sleeping, feeling that he was in danger of being killed, and was bothered by loss of interest and feelings of depression. The health care provider noted a number of medical concerns and commented that Petitioner should seek assistance for his marital and sleep issues; however, Petitioner was not referred for any follow-on care.

c. On 14 February 2011, Petitioner was placed on a six-month period of Limited Duty (LIMDU) for Bilateral Patellofemoral Pain Syndrome. In March 2011, Petitioner was evaluated for back pain, which he reported worsened since his return from deployment. Petitioner underwent a MRI and was diagnosed with lumbar spondylosis. On 1 April 2011, Orthopedic

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Surgery recommended Petitioner be referred to the Physical Evaluation Board (PEB) at the end of the LIMDU if not able to return to full duty.

d. On 21 June 2011, during his separation physical examination, Petitioner listed his left knee and back as conditions that limited his ability to work in his military occupation specialty (MOS). He also listed several conditions for which he intended to seek Department of Veterans Affairs (VA) assistance. He endorsed "nervous trouble," trouble sleeping (prescribed sleeping pills chronically), counseling, excessive worry, and mental health treatment in service. The examining physician reviewed Petitioner's endorsed symptoms and conditions and determined Petitioner was medically qualified for separation from active duty without indication for any additional consultations or referrals for treatment that would require keeping Petitioner on active duty. Petitioner was subsequently discharged on 16 September 2011 with an Honorable characterization of service; on 17 September 2011, the VA rated Petitioner 30% for adjustment disorder with depressed mood. In 2016, the VA adjusted Petitioner's diagnosis to post-traumatic stress disorder (PTSD).

e. Petitioner, via counsel, requests a disability retirement based on medical conditions he asserts were incurred in service, specifically, PTSD, degenerative disc disease, traumatic brain injury, (TBI), Tinnitus, and knee pain. Petitioner contends the Marine Corps erred in failing to properly address these medical conditions prior to his discharge.

f. The Board sought an advisory opinion (AO) from a licensed psychiatrist regarding Petitioner's allegations. The Physician Advisor found that prior to discharge, Petitioner experienced debilitating symptoms indicative of Adjustment Disorder with Depressed Mood (as a precursor to PTSD) and Lower Back Pain (manifested as Lumbar Strain and Degenerative Disc Disease) of such severity as to prevent the Petitioner from reasonably performing the duties of his office, grade, rank, MOS, or rating. The AO further stated that had Petitioner been referred to the PEB, it is likely he would have been found UNFIT for service for his conditions of Lower Back Pain and Adjustment Disorder. The AO recommended a correction of the record to show Petitioner was Unfit for the following conditions with placement on the Temporary Disability Retired List (TDRL):

1. Lower Back Pain (rated as Lumbosacral Strain and Degenerative Disc Disease), VA Code 5237, rated at 20%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
2. Adjustment Disorder with Depressed Mood, VA Code 9440, rated at 30%, permanent and unstable, not combat related (NCR), non-combat zone (NCZ)

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In keeping with the letter and spirit of reference (b), the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about traumatic or stressful events he experienced, and their possible adverse impact on his service, to include whether they qualified Petitioner for the military disability benefits he seeks. The Board concurred with the Advisory Opinion; there was ample evidence in Petitioner's record

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documenting increasing and debilitating back and knee pain to include radiology records, a placement on LIMDU with extensive limitations to physical activity, and a number of medical records indicating that Petitioner received counseling as well as antidepressant medication. The Board further agreed with the AO that there was insufficient evidence to support the contention that Petitioner was unfit for the conditions of TBI and Tinnitus. The Board determined that Petitioner's separation physical was erroneous and unjustly denied Petitioner the opportunity to have these conditions evaluated by the PEB. However, the Board concluded that there was not enough evidence to currently put Petitioner on the Permanent Disability Retirement List (PDRL) and found that Petitioner's record should be reviewed by the PEB to determine whether PDRL is warranted.

RECOMMENDATION

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

The Petitioner be found Unfit and placed on the Temporary Disability Retired List at a combined rating of 70% for the following conditions:

1. Major Depressive disorder with Traumatic Brain Injury Residual of Hydrocephalous Secondary to Status Post AV Shunt Placement (Claimed as Depression, Hydrocephalus and TBI), VA Code 8045-9434, rated at 50%, not combat related (NCR), not incurred in a combat zone (NCZ).
2. Migraines also diagnosed as Tension Headaches (Claimed as Headaches), VA Code 8100, rated at 30%, not combat related (NCR), not incurred in a combat zone (NCZ).

No further relief be granted.

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.

6/28/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]