



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. 2715-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █  
[CURRENTLY KNOWN AS █], USN, XXX-XX-█

Ref: (a) 10 U.S.C. § 1552  
(b) DODD 1332.18, Separation or Retirement for Physical Disability, 4 November 1996  
(c) SECNAVINST 1850.4, Department of the Navy Disability Evaluation Manual  
(d) 10 U.S.C. § 1210  
(e) USD (P&R) Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge," 25 August 2017

Encl: (1) DD Form 149 w/enclosures  
(2) DD Form 214  
(3) █, Department of Psychiatry, Report of Medical Evaluation Board, 7 July 1997  
(4) Findings of the Physical Evaluation Board Proceedings, Ref. # █, 26 February 1998  
(5) BUPERS Message, subj: Temporary Disability Retirement (TDRL) Authorization// [Petitioner], dtg 090015Z APR 98  
(6) █, Compensation and Pension Exam Report, 25 November 1998  
(7) Department of Veterans Affairs Rating Decision, 30 May 2001  
(8) █ Memo6320 BUC50, subj: Temporary Disability Retired List (TDRL) Periodic Evaluation Report ICO [Petitioner], 4 January 2000  
(9) JDETS Findings and Recommended Disposition Work Card, printed 24 January 2000  
(10) Findings of the Physical Evaluation Board Proceedings, Ref. # █, 14 February 2000  
(11) Election of Option for Record Review Panel Preliminary Findings [Petitioner], 3 March 2000  
(12) PEB President Memo 1850 10R:111 PEB Index No. █, subj: Notification of Decision, 7 March 2000  
(13) COMNAVPERMOM Message, subj: Notification of Physical Disability Separation Authorization from TDRL with Severance Pay ICO Officer/Enlisted Personnel, dtg 170905Z MAR 00  
(14) █ VAMC, Compensation and Pension Exam Report, 16 January 2007  
(15) █, Mental Health Physician Note, 29 January 2007  
(16) Department of Veterans Affairs Rating Decision, 23 April 2007

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

1. Pursuant to the provisions of reference (a), the Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that her naval record be corrected to reflect her placement on the Permanent Disability Retired List (PDRL) with a 70 percent disability rating.
2. The Board considered Petitioner's allegations of error or injustice on 20 July 2023 and, pursuant to its governing regulations, found sufficient evidence of an error or injustice warranting the relief recommended below. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include reference (e).
3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.
  - b. Although Petitioner did not file enclosure (1) in a timely manner, it is in the interests of justice to waive the statute of limitation and consider Petitioner's application on its merits.
  - c. Petitioner enlisted in the Navy and commenced a period of active duty service on 8 July 1996. See enclosure (2).
  - d. On 18 May 1997, Petitioner was admitted for in-patient psychiatric treatment at [REDACTED] based upon her self-report of suicidal ideations after an argument with her husband.<sup>1</sup> During the course of her treatment, she had to be placed into seclusion and administered sedatives on several occasions due to violent behavior which threatened her safety and property. Additionally, on one occasion she superficially lacerated her wrist with a razor and had to be transferred back to the locked ward and placed on suicidal precautions. See enclosure (3).
  - e. On 7 July 1997, a Medical Evaluation Board (MEB) diagnosed Petitioner with Dissociation Disorder (Not Otherwise Specified), which was determined to have existed prior to but aggravated by her service and to severely impair her military duties. She was also diagnosed with Borderline Personality Disorder. Accordingly, the MEB referred Petitioner to the Disability Evaluation System (DES). See enclosure (3).
  - f. On 26 February 1998, an Informal Physical Evaluation Board (PEB) found Petitioner to be unfit due to Major Depressive Disorder (MDD), and recommended that she be placed on the Temporary Disability Retired List (TDRL) with a 30 percent disability rating. See enclosure (4).
  - g. On 9 April 1998, the Bureau of Naval Personnel directed Petitioner's placement on the TDRL with a 30 percent disability rating, effective 30 April 1998. See enclosure (5).

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<sup>1</sup> Petitioner reported that she was intensely angry, upset, and suicidal because she believed that her husband would not return to her after his seven day cruise.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

h. On 29 April 1998, Petitioner was honorably discharged from the Navy, and placed on the TDRL on the following day. See enclosure (2).

i. On 25 November 1998, Petitioner underwent a Compensation and Pension (C&P) Examination pursuant to her claim for disability benefits from the Department of Veterans Affairs (VA). She was diagnosed with both MDD and post-traumatic stress disorder (PTSD), which the examiner attributed to her military service. See enclosure (6).

j. On 3 May 1999, the VA awarded Petitioner with service connection for MDD and PTSD with a 70 percent disability rating.<sup>2</sup> In assigning this rating, the VA found that her symptoms were considered to be serious with occupational and social impairment noted in most areas of functioning (i.e., work, school, family, mood, judgment and thinking). See enclosure (7).

k. On 6 December 1999, Petitioner underwent her first periodic physical examination (PPE) at [REDACTED] pursuant to her placement on the TDRL. This PPE indicated some improvement in her mental health conditions, despite her last psychiatric treatment having ended in November 1998, and cited active symptoms to include difficulty with staying focused in class, tense mood, frequent nightmares, and impaired concentration. The PPE diagnosed Petitioner's MDD as "resolving" and her Dissociative Disorder as "resolved." It also affirmed the previous diagnosis of Borderline Personality Disorder. The PPE recommended that Petitioner be continued on the TDRL, and found that her return to full duty was not likely due to her personality disorder. Finally, the PPE found that Petitioner "has not made any good adjustments in her daily life other than going to Church of a couple of hours every day." This PPE was forwarded to the PEB by memorandum dated 4 January 2000. See enclosure (8).

l. On or about 31 January 2000, an Informal PEB (IPEB) met to review the results of PPE. There are notes from each of the three members of the IPEB on the JDETS Findings and Recommended Disposition Work Card reflecting that they each believed that Petitioner should be transferred to the PDRL.<sup>3</sup> However, there is a note on the Work Card made presumably by one of the members which states simply "Revised" on 4 February 2000, with another note elsewhere on the Work Card indicating that the disability rating should be finalized at 10 percent.<sup>4</sup> See enclosure (9).

m. On 14 February 2000, the findings and recommendation of the IPEB were published, recommending that Petitioner be removed from the TDRL and medically separated from the Navy with severance pay with a 10 percent disability rating.<sup>5</sup> See enclosure (10).

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<sup>2</sup> The VA found that service connection for PTSD was warranted even though it was a preexisting condition, because its symptoms had increased during active duty and the onset of MDD was noted.

<sup>3</sup> A note initialed by one of the members, dated 1 February 2000, indicated the member's recommendation that Petitioner be transferred to the PDRL. Another initialed note next to the first indicated that member's concurrence with the first member. Finally, a note from the third member indicated that Petitioner's disability remained at 30 percent, which suggests stabilization of the condition and therefore transfer to the PDRL.

<sup>4</sup> There is no explanation in the record for this determination.

<sup>5</sup> There is a page missing in the record of the PEB findings between the findings and the authentication pages. Neither the IPEB members' signatures nor acknowledgment appear anywhere on the record.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX [REDACTED]

n. On 3 March 2000, Petitioner accepted the preliminary findings of the IPEB, and waived her right to a formal hearing. See enclosure (11).

o. By memorandum dated 7 March 2000, the PEB notified the Chief of Naval Personnel of its decision and requested that the recommendation discussed in paragraph 3m above be executed. See enclosure (12).

p. On 17 March 2000, Naval Personnel Command ordered that Petitioner be removed from the TDRL and that she be discharged from the naval service by reason of physical disability with severance pay. See enclosure (13).

q. On 21 April 2000, Petitioner was discharged from the naval service for the convenience of the government with severance pay, and removed from the TDRL. See enclosure (2).

r. On 20 December 2000, Petitioner received another C&P Examination from the VA. This examination showed some “decreased functioning compared to the [6 December 1999 PPE discussed in paragraph 3k above], with chronic symptoms of depression with some danger of hurting herself.” While this examination found some overall improvement, “with some symptoms more consistent with a 50 percent evaluation,” it ultimately found the “disability picture” to be consistent with a 70 percent evaluation, “as there are indications of some suicidal ideation; near-continuous depression affecting the ability to function independently, appropriately and effectively; some impaired impulse control; difficulty in adapting to stressful circumstances, and significant problems in establishing and maintaining effective relationships.”<sup>6</sup> Since Petitioner’s condition was considered to be subject to further improvement, the VA found that its 70 percent disability rating was not considered permanent and is subject future reevaluation. See enclosure (7).

s. On 16 January 2007, Petitioner was administered another C&P Examination by the VA.<sup>7</sup> During this examination, Petitioner stated that she had “occasional nightmares and some intrusive thoughts,” and that had “auditory and mainly visual hallucinations.” However, no

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<sup>6</sup> The following VA Schedule for Rating Disabilities (VASRD) rating criteria were applied:

- An evaluation of 50 percent is assigned for “occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.”
- An evaluation of 70 percent is assigned for “occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships.”

<sup>7</sup> Petitioner requested an increase to her disability rating by application dated 9 March 2006.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

suicidal ideation or intent was noted, she was “oriented times three,” her memory was assessed as good, her insight and judgment were assessed as “marginal,” and her intellectual capacity was “adequate.” The examiner found that she was capable of managing her own financial affairs, but did not consider her capable of employment due to her “impulsivity, difficulty with tolerating stress, seclusiveness, [and] impaired capacity to get along with others.” Her previous diagnoses of MDD and PTSD were affirmed. See enclosure (14).

t. Petitioner received outpatient mental health treatment through the VA on 29 January 2007. The records from this encounter reveal that Petitioner “had a recent exacerbation of illness for which she had to be committed involuntarily.”<sup>8</sup> Petitioner denied any perceptual disturbances, as well as any current suicidal ideation. See enclosure (15).

u. On 23 April 2007, the VA continued Petitioner’s disability rating for PTSD and MDD at 70 percent. She was also granted entitlement to unemployability effective on the date of her application. See enclosure (16).

v. Petitioner alleges the following errors in support of her application for relief:

(1) The Navy’s disability ratings are flawed and should be corrected to reflect the 70 percent rating provided by the VA. In this regard, Petitioner cited to reference (b), which provides that “assignment of disability ratings shall be based on the [VASRD].”<sup>9</sup> Petitioner asserts that the rating assigned upon Petitioner’s placement and removal from the TDRL were instead based upon the versions of reference (c) in effect at the time of each action. She notes that the factors described in reference (c) were intended to be “descriptive, not all inclusive, and ... amplifications, not substitutions for the VASRD criteria.” Whereas the VASRD criteria “considers how the disability affects the whole person (e.g., work, school, family relations, judgment, thinking, and/or mood),” the Navy criteria for placement onto and removal from the TDRL “merely seek[s] to measure the disability through more narrow criteria (e.g., the service member’s job stability, medication type, frequency of medication, etc.) that were only intended to supplement the VASRD.” Petitioner suggests that if the Navy had properly relied upon the VASRD and used reference (c) merely as a supplement as was required, the difference in ratings would likely have been significantly narrower than the strikingly large gap between the 10 percent final PEB determination and the successive 70 percent VA ratings. Petitioner further asserts that any doubt regarding which rating should be applied should be construed in her favor.<sup>10</sup> Finally, Petitioner asserts that the Navy’s ratings of her disability are contrary to congressional intent as reflected by passage of the Wounded Warrior Act in 2008, which codified the VASRD as the foundation for any disability rating across the service branches.

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<sup>8</sup> A pending relocation was identified as a stressor for this episode.

<sup>9</sup> Petitioner also cited to DODI 1332.39, which established the VASRD “as the standard for assigning percentage ratings.”

<sup>10</sup> In this regard, Petitioner again cited to DODI 1332.39, which recognized that a VA rating may differ from a given service branch’s rating, and stated that the higher percentage rating must be assigned (1) when the service member’s disability more nearly approximates the criteria for the higher rating, or (2) where “there remains a reasonable doubt as to which rating should be applied, such doubt will be resolved in favor of the [service] member.”

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED] USN, XXX-XX-[REDACTED]

(2) The 10 percent disability rating assigned by the IPEB in February 2000 was prematurely assigned prior to Petitioner's condition stabilizing for rating purposes. Reference (d) provides that "a physical examination shall be given at least once every 18 months" to each service member on the TDRL "to determine whether there has been a change in the disability for which [she] was temporarily retired," and that a "final determination" concerning each service member's status must be made within five years and, "[i]f, at the time of that determination, the physical disability ... still exists, it shall be considered to be of a permanent nature and stable." The examining provider who conducted Petitioner's first PPE in December 1999 found improvements in Petitioner's condition and recommended that she "continue on the TDRL," indicating that her unfitting condition was not of a permanent nature and stable, which are both required for a permanent rating" in accordance with reference (c). This recommendation was inexplicably ignored by the PEB, which removed her from the TDRL with a 10 percent disability rating without conducting any further examinations to justify such a decision. Petitioner asserts that her condition was not stable at the time of her removal from the TDRL; the VA C&P Examination conducted later that year reflected "some decreased functioning compared to the [PEB] findings, with chronic symptoms of depression with some danger of hurting herself." Further the VA has continuously maintained Petitioner's disability rating at 70 percent since it was first assigned. Additionally, Petitioner noted that the PEB's assignment of a 10 percent disability rating was based upon a temporary improvement of functioning that did not persist over time. Specifically, the PEB justified its lower rating by stating that Petitioner had "not been hospitalized for psychiatric symptoms since service separation and is not taking psychotropic medication," but in fact she did continue taking psychotropic medication and was subsequently involuntarily hospitalized for her MDD, PTSD, and Borderline Personality Disorder."

(3) The preponderance of the evidence reflects that Petitioner's disability rating should be set at 70 percent. In this regard, Petitioner describes the VA examinations as being more probative of her disability than the Navy examinations, and that they must therefore be accorded substantial weight in determining her disability rating. Specifically, she notes that the Navy failed to account for her PTSD, as the condition does not appear in any report, despite the fact that the VA found that the service connection for MDD and PTSD had "been established as directly related to military service" as early as 1998. Finally, Petitioner notes that the VA has consistently rated Petitioner's disability at 70 percent, which suggests that this rating was correct and should be followed.

See enclosure (1).

w. By memorandum dated 17 July 2023, the Board's Physician Advisor/Psychiatrist provided an advisory opinion (AO) for the Board's consideration based upon his review of Petitioner's application and records, which found that there is sufficient clinical evidence to support Petitioner's claim that she was erroneously removed from the TDRL with a 10 percent disability rating. Based upon his review of the record, the Board's Physician Advisor made the following specific findings:

(1) The initial assignment of a 30 percent disability rating for MDD and placement on the TDRL was appropriate based upon the psychological symptoms documented throughout her inpatient and outpatient treatment records.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

(2) There is no documentation of any symptoms suggestive of PTSD during Petitioner's military service. Her documented in-service symptoms did not support such a diagnosis, but were instead diagnosed as a Dissociation Disorder largely due to the primary diagnostic characteristic of her depersonalization episodes.

(3) Petitioner's PTSD diagnosis was established after her discharge from the Navy. Subsequent VA rating decisions demonstrated the stable and enduring nature of the diagnoses of MDD and PTSD by continuing the diagnoses at a 70 percent disability evaluation.

(4) The PPE conducted in December 1999 indicated some improvement in her condition, and cited active symptoms including difficulty with focus, tense mood, frequent nightmares, and impaired concentration. The examiner recommended continuation on the TDRL, as Petitioner's Occupational Problems rendered her unsuitable for further military service, her Personality Disorder also negatively affected her ability to return to full duty, and she had not made "any good adjustments in her daily life other than going to Church."

(5) The IPEB Working Card indicated consensus for discharge to the PDRL at a 30 percent disability evaluation, and the ultimate change to this final disposition was not explained in any documentation. Additionally, there was no evidence that the December 1999 PPE or the February 2000 IPEB had access to, or reviewed, Petitioner's November 1998 C&P Examination or the VA's rating decision of May 1999.

(6) Petitioner's in-serve records established the primary unfitting condition as Major Depressive Episode with clinical documentation supporting a 30 percent disability rating at the time of discharge to the TDRL. Petitioner has also provided post-discharge evidence of a PTSD diagnosis, when combined with the existing diagnosed MDD, resulted in a VA determination of service-connection and 70 percent disability rating.

(7) Petitioner's initial VA C&P examination, VA rating decision, and TDRL PPE occurred between November 1998 and December 1999. MDD is prominently featured in both the PEB/TDRL and VA C&P examinations. Although PTSD only emerges in the post-discharge VA evaluations, there are PTSD symptoms beginning during Petitioner's active duty hospitalizations that were conceptualized as a Dissociation Disorder, as the criteria for a diagnosable PTSD condition was not elicited during the MEB and TDRL PPE. The full spectrum of combined symptoms viewed across all the evaluations during this period resulted in a clearer psychological picture of Petitioner's psychological statement supported a higher level of impairment from the cumulative effect of the examinations.

(8) When viewed across all evaluations contemporary to the time of the TDRL PPE, the cumulative symptoms included: depressed and anxious mood, suspiciousness, chronic sleep impairments, impairment of short- and long-term memory, disturbances of motivation and mood, difficulty in establishing and maintaining effective work and social relationships, near-continuous depression affecting the ability to function independently, appropriately, and effectively, irritability, impaired impulse control, neglect of personal appearance and hygiene, and difficulty in adapting to stressful circumstances.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

(9) The range and severity of these symptoms and their impact on Petitioner's well-being and daily functioning represented a level of impairment best described within the VASRD as "Occupational and social impairment with reduced reliability and productivity," which is commensurate with a disability rating evaluation of 50 percent.

Based upon these findings, the AO recommended that Petitioner's naval record be corrected to reflect that, at the time of her removal from the TDRL on 21 April 2000, she was unfit for the following condition with placement on the PDRL:

1. Major Depressive Disorder, Single Episode, VA Code 9434, rated at 50%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).
2. This results in a combined rating of 50%."

#### MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board found an error/injustice warranting partial relief.

The Majority found no error or injustice in the determination of Petitioner's first IPEB that she was unfit due to MDD, and should be placed on the TDRL with a 30 percent disability rating. This determination was fully informed by and consistent with Petitioner's in-service medical records, including the observations made over the course of more than a month of inpatient treatment and observation leading up to her MEB. Per the AO, there was nothing present in Petitioner's medical record which would support a diagnosis for PTSD. The IPEB could only make findings based upon symptoms observed by and/or reported to medical providers. It was apparent that Petitioner reported more symptoms in the context of her VA C&P Examination than she had demonstrated or reported to Navy mental health providers. This is obvious since the initial PTSD diagnosis was made by the VA C&P examiner without the benefit of her C File. In this regard, the initial IPEB findings were, contrary to Petitioner's contention, more reliable than was the VA determination which was made without the benefit of any observed treatment or even the relevant medical records. For this reason, the Board found no error in the disparity between the disability ratings assigned by the Navy and the VA. The Majority also found no evidence to support Petitioner's contention that the 30 percent disability rating assigned by the first IPEB was not based upon the VASRD. As discussed in paragraph 3w(1) above, the AO found that the 30 percent disability rating assigned for the occupational and social impairment assigned was appropriate given the documented symptoms at the time.

The Majority also finds no error or injustice in the lack of diagnosis with, or consideration of, PTSD. First, as discussed above, there was nothing in Petitioner's in-service medical records which would have supported such a diagnosis. That diagnosis was first made after her discharge, and based upon symptoms that she had not previously demonstrated or reported while in the Navy. Accordingly, there was no reason for PTSD to have been included in the evaluation of Petitioner's disability by her first IPEB. Additionally, as discussed in paragraph 3w(5), there is no evidence or reason to believe that Petitioner's second IPEB had access to any records reflecting the VA diagnosis and/or determination of service connection for PTSD. Petitioner



Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED] USN, XXX-XX-[REDACTED]

entered the DES prior to its integration with the VA, so there was no connection which would have informed the PEB of this post-service diagnosis. Again, the IPEB cannot be faulted for failing to identify a disabling condition which was not reflected in Petitioner's medical records and which Petitioner failed to raise. In this regard, the Majority noted that Petitioner accepted the results of the IPEB and did not request a formal hearing where she could have disputed the findings. Finally, and most importantly, the Majority finds the absence of PTSD from the Navy's disability determination to be irrelevant. The inclusion of PTSD to Petitioner's disability determination would not have resulted in a different disability rating. The VA did not rate Petitioner's PTSD separately from MDD. Rather, the VA considered Petitioner's MDD condition to be derivative to her preexisting PTSD condition, and combined the two conditions for rating purposes. As disability ratings pursuant to the VASRD are based upon the occupational and social impairment attributable to the individual's disabling conditions, it makes no difference in Petitioner's case whether that disabling condition was MDD or PTSD with MDD. What matters is the occupational and social impairment that is attributable to the condition, and the association of Petitioner's MDD condition with her preexisting PTSD condition would not have had any effect upon that assessment.<sup>11</sup>

While finding no error or injustice in the original IPEB determination that Petitioner was unfit due to MDD with a 30 percent disability rating, the Majority did find an error in the reported finding of Petitioner's second IPEB which reduced her disability rating to 10 percent and removed her from the TDRL. First, this decision was contrary to the recommendation made by the Navy medical provider who specifically recommended that Petitioner remain on the TDRL at enclosure (8). There is no explanation for the PEB's deviation from this recommendation, which makes the determination arguably arbitrary and capricious. Second, the evidence reflects that the members of the IPEB actually believed that Petitioner should be transferred to the PDRL. Enclosure (9) includes hand-written notes from each of the three IPEB members which suggested that they believed that Petitioner should be transferred to the PDRL with at least a 30 percent disability rating as of 31 January – 1 February 2000. However, when the results of the IPEB were published two weeks later in enclosure (10), the IPEB's decision was represented as a recommendation that her disability rating be lowered to 10 percent and that she be removed from the TDRL and medically separated with severance pay. There is no explanation for this change, or even any acknowledgment by any of the IPEB members that this change actually represented their determination. Additionally, there is no evidence in the record upon which the conclusion that Petitioner's disabling condition had stabilized could be reached. These factors raised questions for the Majority regarding whether the IPEB's findings were accurately represented by the PEB. Finally, Petitioner has provided sufficient medical evidence to establish that her disabling condition had not stabilized as of the date of her medical separation from the Navy, so the published recommendation of the IPEB that she should be removed from the TDRL based upon improvements to her condition was premature. Specifically, enclosure (7) reflects that a psychiatric evaluation conducted on 20 December 2000, just eight months following her removal

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<sup>11</sup> This conclusion does not imply that the Majority doubted the validity of Petitioner's PTSD diagnosis. Applying liberal consideration in accordance with reference (d), the Majority did not doubt that Petitioner had a PTSD condition which predated her naval service and which was exacerbated by that service. It simply did not find the existence of this particular condition to be particularly relevant, as the existence of a medically disqualifying condition was not in doubt. The only questions in this case pertained to the severity and stability of that condition, which reference (d) does not address.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

from the TDR, established that her condition had worsened since the PPE which informed the second IPEB. Specifically, it showed "some decreased function compared to the [PPE findings], with chronic symptoms of depression with some danger of hurting herself." At the very least, this documented deterioration in her disabling condition demonstrates that it had not stabilized as of February 2000, and that the PEB determination that she should be removed from the TDRL at that time was premature.

Based upon the advice provided by the Board's Medical Advisor in the AO, the Majority concludes that Petitioner's disabling condition has stabilized with symptoms justifying a 50 percent disability rating. The Majority not only found this conclusion to be supported by the evidence and reasonable in its own right, but also found it to be supported by the VA's own assessment. Specifically, the VA acknowledged in 2001 in enclosure (7) that Petitioner had shown some improvement in her overall condition, with "some symptoms more consistent with a 50 percent evaluation." Despite this observation, the VA determined that "the disability picture continues to be most consistent with a 70 percent evaluation, as there are indications of some suicidal ideation; near-continuous depression affecting the ability to function independently, appropriately and effectively; some impaired impulse control; difficulty in adapting to stressful circumstances; and significant problems in establishing and maintaining effective relationship." However, the medical records provided at enclosures (14) and (15) reflect no suicidal ideations and an ability to function independently. As several of the bases that justified the VA's determination to rate Petitioner's disability at 70 percent rather than at 50 percent had been resolved, the Majority found the Medical Advisor's assessment to be sound.

**MAJORITY RECOMMENDATION:**

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect her placement on the PDRL, effective on the date of her removal from the TDRL, with the finding of unfitness as follows:

1. Major Depressive Disorder, Single Episode, VA Code 9434, rated at 50 percent, permanent and stable, not combat related (NCR), non-combat zone (NCZ).
2. This results in a combined rating of 50 percent.

That, upon completion of the corrections directed herein, a copy of this record of proceedings be provided to the Defense Finance and Accounting Service to conduct an audit of Petitioner's finance records to determine what, if any, back pay and allowances may be due Petitioner as a result of this corrective action.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on Petitioner's naval record.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority conclusions that there was no error and/or injustice in the determination of the original IPEB that Petitioner should be placed on the TDRL for MDD with a 30 percent disability rating, or in the failure to identify and/or incorporate Petitioner's PTSD condition into the disability determination, as discussed above.

The Minority disagreed with the Majority conclusion and the AO, however, that there was any error or injustice in the second IPEB's determination in February 2000 that Petitioner should be removed from the TDRL with a 10 percent disability rating and medically separated from the Navy. In this regard, the Minority applied the presumption of regularity to the decision of the IPEB, and was not inclined to second guess a reasonable decision made by qualified members of the IPEB more than 23 years ago. The Minority also noted the evidence provided that Petitioner's disqualifying condition arose from a preexisting condition which was not known at the time of her entry into the naval service, and found no evidence or reason to believe that that condition was aggravated by her naval service in any way.<sup>12</sup> Under these circumstances, the Minority did not find it appropriate to award Petitioner a medical retirement for a condition which was neither attributable to, nor obviously aggravated by, her naval service.

MINORITY RECOMMENDATION:

In view of the foregoing, the Board Minority recommends that no corrective action be taken on Petitioner's naval 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. The foregoing action of the Board is submitted for your review and action.

9/11/2023

[REDACTED]

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<sup>12</sup> Per enclosures (6) and (7) Petitioner's PTSD condition resulted from abuse suffered as a child. The VA established service connection for this preexisting condition because her psychiatric symptoms had increased during her active duty service and the onset of her MDD was noted. However, the VA did not identify what it was about her naval service which aggravated this condition, and actually attributed her increased psychiatric symptoms to marital problems.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[CURRENTLY KNOWN AS [REDACTED]], USN, XXX-XX-[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

\_\_\_ MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

\_\_\_ Petitioner’s Request Approved (Full Relief – I generally concur with the Majority that there was an error in Petitioner’s premature removal from the TDRL in 2000, and that the evidence reflects that her disabling condition continued to produce symptoms which warranted a disability rating above 30 percent and therefore transfer to the PDRL. However, based upon the continuous determination of the VA that Petitioner’s disabling condition warrants a 70 percent disability rating, I do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Accordingly, I direct the relief recommended by the Majority above, except that her finding of unfitness should reflect the following:

1. Major Depressive Disorder and PTSD, Single Episode, VA Code 9411-9434, rated at 70 percent, permanent and stable, NCR, NCZ.
2. This results in a combined rating of 70 percent.

1/6/2024

