



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

[REDACTED]
Docket No. 3925-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USNR RET,
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) Petitioner's Official Military Personnel File

Encl: (1) DD Form 149 w/attachments

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 to reflect that the injury for which he was found not physically qualified (NPQ) be determined to have been incurred in the line of duty (LOD).

2. The Board, consisting of [REDACTED], [REDACTED], and [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. According to reference (b), after serving an enlistment in the Army from 2000 to 2005, Petitioner enlisted in the Navy Reserve. On 26 September 2014, he commenced a set of orders to the [REDACTED]. While deployed, he developed the condition psychogenic non-epileptic seizure disorder which resulted in his medical evacuation from [REDACTED], [REDACTED] to [REDACTED] Regional Medical Center in June 2015. He then received medical treatment at Naval Medical Center [REDACTED] and was subsequently demobilized and returned to duty as a drilling Reservist on 30 June 2015. On 21 March 2016, Petitioner signed an Administrative Remarks (Page 13) Injury, Illness, Disease Disclosure, indicating that he believed he had a neck injury incurred or aggravated as a Reservist in LOD. Since his demobilization, he has a record of ongoing evaluation and treatment by the Department of Veterans Affairs neurology and mental health specialty services.

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c. Petitioner's Navy Reserve Unit placed him into Medical Retention Review (MRR). Thereafter, beginning in October 2019, a series of e-mail communications reveal that Petitioner sought to ensure that he be provided an LOD. The e-mail messages reveal that members in his chain of command provided him incorrect information. For example, his Chief incorrectly told him that the Physical Evaluation Board (PEB) would make the LOD determination. Petitioner diligently sought to obtain a proper LOD finding, including, on 4 November 2019, having his legal counsel seek to terminate his forthcoming PEB in order for Petitioner to obtain a proper LOD finding. On the same day, the PEB rejected Petitioner's request, noting that a LOD benefits determination was not required for the PEB to adjudicate a MRR.

d. On 5 November 2019, the Formal PEB (FPEB) published its Formal Rationale. In its Formal Rationale, the FPEB described Petitioner's medical event while in [REDACTED], among other things, and it found him to be unfit. The FPEB explained that, in the absence of an LOD, the FPEB was constrained to make a determination solely as to Petitioner's physical qualification for continuing in the Navy Reserve and, the FPEB determined that Petitioner was not physically qualified (NPQ). On 22 November 2019, the FPEB published its findings that Petitioner was unfit due to Psychogenic Non-Epileptic Seizure Disorder.

e. On 4 December 2019, the Petitioner filed a Petition for Review (PFR). On 18 December 2019, the PEB denied the Petitioner's PFR, reasoning that the Chief of Naval Personnel was the only entity that can make an LOD finding. The PEB did not address the fact that, the previous month the Petitioner requested the PEB to delay the FPEB in order to obtain an LOD before the FPEB hearing, and the PEB denied his request to obtain the required LOD.

f. Petitioner received retirement orders on 20 February 2020, directing that his retirement to be effective 1 March 2020.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. The Board found sufficient evidence that Petitioner diligently sought to obtain an LOD prior to his PEB, and that he received inconsistent and incorrect advice concerning the LOD process from his chain of command. The Board further found that it appears Petitioner's command did not process his LOD request as it was required, and that Navy Personnel Command was the appropriate organization and sole authority to adjudicate his LOD. Accordingly, the Board recommended that relief be granted as described below.

RECOMMENDATION

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

Petitioner's naval record be corrected by transmitting his LOD request to Navy Personnel Command for adjudication, and for further processing to the PEB for evaluation of disability, if appropriate. Petitioner shall be afforded all due process rights associated with a LOD review and, if required, the Disability Evaluation System process.

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And 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.

3/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]