



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

[REDACTED]  
Docket No. 3980-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]  
XXX XX [REDACTED] USMCR

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

Encl: (1) DD Form 149 w/attachments

1. Pursuant to the provisions of the reference, 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 his line of duty (LOD) request and that he be referred to a medical evaluation board.

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. Per reference (b), Petitioner was commissioned a second lieutenant in the Marine Corps and commenced a period of active duty on 1 February 2009. He remained on active duty until 25 January 2013, when he completed his required active service and affiliated with the Marine Corps Reserve. Petitioner states that, shortly before his discharge, he began to seek treatment at the [REDACTED] Medical Center (VAMC) for service-connected mental health issues.

c. On 2 October 2014, Petitioner was mobilized onto active-duty status in support of Operation Enduring Freedom. According to Petitioner, after he mobilized, he discontinued all prescription medications at the recommendation of his unit's Independent Duty Corpsman. On 14 October 2014, he was medically disqualified for deployment by medical. Petitioner asserts that during his short period in mobilization status, his psychiatric symptoms worsened.

d. On 18 October 2014, Petitioner resumed care for mental health conditions at Miami VAMC. Thereafter, he was placed into a temporarily not physically qualified status by his reserve unit, and eventually his unit leadership recommended he be reviewed by a medical board.

e. Petitioner sought LOD status for his mental health conditions. On 10 September 2015, Petitioner's LOD request was disapproved based on the rationale that, "[m]ember's injury cannot be link during a period of Active Duty. SNO was separated from Active Duty on 20130125."

f. On 21 September 2015, the Reserve Medical Entitlements Division (RMED), denied Petitioner's request for incapacitation pay and medical benefits. The RMED's determination and disapproval letter was delivered to Petitioner and his unit via the Marine Corps Medical Entitlements Determination System on 21 September 2015. The disapproval letter explained that there is no medical documentation to indicate an aggravation of Petitioner's condition in a reserve duty status, that the medical documentation provided indicates Petitioner's condition is the direct result of Active Duty service while in a Component Code 11 duty status, and that the member received a 100% disability rating from Veterans Affairs (VA) and is currently receiving ongoing treatment with the VA. The letter from RMED to Petitioner explained that he had 60 days to appeal the denial to the Deputy Assistant Secretary of the Navy, Reserve Affairs.

g. Petitioner asserts that, in 2015, his LOD case was improperly handled, resulting in the denial of his right to appeal the RMED decision via traditional channels, and that he was later separated on 1 January 2016 by reason of being found not physically qualified for retention<sup>1</sup>. He requests that his LOD be granted and his case file be sent to a Medical Evaluation Board (MEB). In support of his request, Petitioner asserts that his command did not provide him with a copy of the RMED denial letter before or after the 60-day appeal window had expired, nor was he ever informed of the justification of the disapproval until after he requested assistance via a Congressional inquiry. He also contends that the denial letter was not sent to him via certified mail, as required by relevant policy. Petitioner further argues that the LOD denial did not take into consideration the history and timeline of his injuries, character of his service, or medical evidence, which he contends show that his injuries were incurred or aggravated during periods of active duty and drill. He also argues that the medical representative responsible for submitting his LOD package did not follow proper procedure. Finally, he states that he was coerced by his medical representative and chain of command to not pursue an appeal on any related matters.

## 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 determined that there appears to be no evidence that the Petitioner was timely notified of the RMED denial of his request for incapacitation pay or medical benefits, which resulted in his inability to appeal the denial within the prescribed timeframe.

With respect to the Petitioner's request that his LOD be granted and that he be referred to a MEB, the Board determined that it did not have sufficient information to grant this relief. Thus, the Board determined that, in furtherance of addressing an injustice, Petitioner should be provided the opportunity to file an appeal to the denial of his LOD. The Board took no position on the merits of such an appeal or whether a referral to a MEB is appropriate and concluded that

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<sup>1</sup> Petitioner's official military personnel file indicates he was discharged on 4 January 2016 with Separation Program Designator (SPD) Code JFR3. The JFR3 SPD code is issued to members who are involuntarily discharged for a physical disability not in the line of duty and not due to misconduct.

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issue is not yet ripe for consideration in light of the decision to allow Petitioner an opportunity to appeal the LOD decision.

#### RECOMMENDATION

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

Petitioner shall be authorized to submit an appeal to the denial of his LOD within 60 days of the receipt of notice of this letter.

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.

3/22/2023

[REDACTED]  
Executive Director

Signed by: [REDACTED]