



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

[REDACTED]
Docket No. 4919-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149

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 his case be returned to the Physical Evaluation Board (PEB), or that the PEB be directed to forward his request for a rating reconsideration be forwarded to the U.S. Department of Veterans' Affairs (VARR).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 5 December 2022, 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.

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. The Petitioner enlisted in the Navy and commenced a period of active duty on 15 February 2012. During his service, on 19 August 2021, he was referred into the disability evaluation system (DES) process by a medical board for the condition of epilepsy. An Informal Physical Evaluation Board (IPEB) received his medical board package on 25 October 2021. The IPEB rendered a decision that the Petitioner was unfit for continued service on 6 February 2022. The VA completed the rating of his conditions on 28 February 2022. The PEB assembled the Petitioner's case and transmitted the file to the Petitioner's Physical Evaluation Board Liaison Officer (PEBLO) on 24 March 2022.

c. The PEBLO transmitted the IPEB findings and the VA proposed ratings to Petitioner on 25 March 2022. On 31 March 2022, Petitioner returned the Election of Options Form (EOO) to the PEBLO. On this form, he accepted the IPEB finding for his unfit condition and marked his request for a VARR. Importantly, according to the Petitioner, he also submitted new and

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material medical evidence in support of his VARR. The materials Petitioner submitted were received by the PEBLO and saved to his computer folder.

d. On 13 May 2022, the Petitioner informed his PEBLO that he received notice that he was being separated but he had not received a response to his rating reconsideration.

e. On 19 May 2022, Petitioner's representative emailed the PEB to inquire why the rating reconsideration had not been processed. The next day, 20 May 2022, the PEB responded indicating that the Election of Options form had been received but "no new and material evidence was submitted with the election." And, new and material evidence must be submitted to the PEB in order for the PEB to forward the VARR to the VA. Petitioner was subsequently discharged pursuant to his PEB findings.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board determined that it would be unjust if the Petitioner were deprived of the ability to proceed further in his disability process based on the failure of his PEBLO to transmit the Petitioner's new and material evidence along with his EOO, or to ensure its filing, which was through no fault of the Petitioner.

RECOMMENDATION

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

Petitioner's records before the PEB shall be corrected to reflect that he timely filed his EOO along with the new and material evidence. Petitioner shall be given 60 days from the date of this letter to resubmit his new and material evidence for transmittal to the VA for review as a timely filed VARR. All due process rights associated with the Disability Evaluation System will be afforded to the Petitioner during the VARR process and any subsequent PEB decision resulting from the VA reconsideration decision.

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.

12/21/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]