



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

[REDACTED]  
Docket No. 5360-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USNR,  
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552  
(b) BCNR Docket No. 6333-21  
(c) Official Military Personnel File

Encl: (1) DD Form 149 w/attachments  
(2) Advisory Opinion, 18 Sep 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 reconsideration of reference (b), in which he requested that he be placed on the permanent disability retired list (PDRL).

2. The Board, consisting of [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 September 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. A review of Petitioner's reference (b) case file with this Board, as well as reference (c) Official Military Personnel File, reveals that Petitioner enlisted in the Navy and commenced an initial tour of active duty service from 30 January 2001 to 29 January 2006. On 3 April 2007, Petitioner reenlisted in the Navy and served a period of active duty until 1 October 2011, at which time he affiliated with the Navy Reserve. On 15 August 2014, Petitioner mobilized to Afghanistan in support of Operation Enduring Freedom until 10 May 2015. On 4 March 2016, Petitioner was treated by the Department of Veterans Affairs (VA) for mental health symptoms related to his deployment after reporting to a hospital emergency department suicidal ideation.

b. On 8 August 2017, Petitioner's Commanding Officer prepared a non-medical assessment, which stated that the Petitioner was working outside his rate but he was otherwise providing

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valuable service to his unit through training. The Commanding Officer noted that Petitioner wanted to continue his service because he wanted to reach retirement.

c. On 31 October 2017, the Bureau of Medicine and Surgery determined that the Petitioner was not physically qualified (NPQ) for retention in the Navy Reserve due to hypothyroidism, sleep apnea, right hip pain due to labral tear, patella femoral syndrome, intermittent back pain, posttraumatic stress disorder causing depressed mood and anxiety. In response, Petitioner elected to have the Physical Evaluation Board (PEB) review his NPQ status. On 22 October 2018, the PEB found Petitioner to be qualified to continue his reserve status. The PEB noted that Petitioner claimed to have sustained his conditions while deployed but no line of duty existed. The PEB also stated Petitioner's conditions did not appear to be duty limiting despite the fact that he is non-deployable. In November 2018, Petitioner completed a request for line of duty benefits. Navy Personnel Command acknowledged that Petitioner's Post-Traumatic Stress Disorder (PTSD) was incurred in the line of duty, but noted that Petitioner returned to duty on 9 January 2019, and determined that, as such, there was no line of duty required. Thereafter, however, Petitioner was granted authorization for reimbursement of medical expenses from March 2016 through January 2019. On 17 December 2020, Petitioner was issued a medical excuse to miss work until 19 March 2021 due to symptoms of depression. On 18 February 2021, Petitioner submitted another line of duty request, for which there is no apparent disposition available.

d. In 2020, Petitioner submitted his first petition with this Board seeking to be placed on the PDRL. In connection with that request, the Board obtained an advisory opinion (AO) from the Secretary of the Navy Council of Review Boards (CORB). That AO was unfavorable to Petitioner's request, finding that although the Petitioner had diagnosed conditions, he was fit for duty as exemplified by the fact that he made meaningful contributions to his unit. On 25 February 2021, this Board denied Petitioner's request. On 27 February 2021, Petitioner was discharged from the Navy Reserve.

e. In 2021, Petitioner filed a petition for reconsideration of his previously denied petition with this Board in which he sought to be placed on the PDRL. On 18 November 2021, this Board denied his petition for reconsideration as follows:

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list for your mental health symptoms, Irritable Bowel Syndrome, and Right Hip condition. You argue that the PEB erroneously determined you were fit for continued service despite medical evidence to the contrary. Unfortunately, the Board disagreed with your rationale for relief. In reviewing the evidence in your case, the Board concluded the preponderance of the evidence supports the PEB findings in your case. Specifically, the Board determined you were, more likely than not, fit for continued service after the PEB found you fit based on your return to duty status on 9 January 2019. Further, the Board noted that you were medically qualified to reenlist on 21 February 2019. In the Board's opinion, this was strong objective evidence that you were capable of performing the duties of your office, grade, rank or rating after being found fit by

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the PEB. Therefore, the Board affirmed the previous Board's decision to deny your request for disability retirement benefits based on the same rationale.

f. In his current petition for reconsideration, Petitioner provided additional medical documentation as new matter in support. The petition and its new matter was provided to a qualified medical professional for review and preparation of the enclosure (2), an updated AO. The AO is considered favorable to the Petitioner, reasoning as follows, edited, with emphasis added:

I have reviewed Petitioner's previous clinical and administrative reports and PEB/BCNR determinations, as well as the newly provided evidence consisting of more recent VA clinical records, medical statement from his Primary Care Provider, and verification of current service connected conditions and disability ratings. VA and civilian medical records from September 2018-March 2021 presented a deteriorating clinical picture due to PTSD and Depressive Disorders.

Petitioner's right hip and lower back chronic pain conditions continued to worsen as well, despite surgery to the right hip and ongoing treatment by physical therapy, chiropractic, orthopedic and primary care services. Dr. [ ]'s medical statement detailed the numerous chronic medical and mental health conditions for which she had raised questions of his fitness for duty in her clinical notes throughout Petitioner's reserve service following the PEB return to duty. She documented Petitioner's conditions had worsened to the point of unemployability from December 2020 onwards and that in her medical opinion he had been unfit for duty since 2017.

In March 2021, Petitioner's psychiatrist noted Petitioner's PTSD/Depressive/Anxiety symptoms had worsened to the point he could not function at work and provided a letter to his employer and chain of command recommending a period of absence from work/reserve duty from March to June 2021 due to his mental health condition. In March 2021, Petitioner applied to the VA for caregiver support due to his inability to work.

In my medical opinion, Petitioner has presented new and material clinical and administrative evidence in support of his contention of unfitness for service at the time of his discharge from the Naval Reserves. Should consideration of Petitioner's request for relief be granted, the recommended correction of the record would result in the following, applied to the time of discharge (27 February 2021):

Unfit for the following conditions with placement on the Permanent Disability Retired List (PDRL):

1. Right Hip Strain/Impingement with limited flexion VA Code 5252, rated at 10%, permanent and stable, not combat related (NCR), combat zone (CZ)

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2. Post Traumatic Stress Disorder (with secondary Depressive Disorder, NOS), VA Code 9411, rated at 100%, permanent and stable, not combat related (NCR), combat zone (CZ)

This results in a combined rating of 100%.

g. The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been referred for PEB determination of unfitness and possible medical retirement."

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that an injustice exists with Petitioner's naval record. Specifically, the Board substantially concurred with the findings of enclosure (2) in concluding that the preponderance of objective clinical evidence provided sufficient support for Petitioner's content that at the time of his discharge he was unfit for continued naval service and should have been referred to the PEB for a determination of fitness and potential medical retirement. The Board adopted the rationale and findings of the AO and concluded that Petitioner's requested relief shall be granted as set forth below.

## RECOMMENDATION

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

Petitioner's naval record shall be corrected to reflect that at the time of his discharge from the Navy Reserve on 27 February 2021, he was found to be:

Unfit for the following conditions with placement on the Permanent Disability Retired List (PDRL):

1. Right Hip Strain/Impingement with limited flexion VA Code 5252, rated at 10%, permanent and stable, not combat related (NCR), combat zone (CZ)

2. Post Traumatic Stress Disorder (with secondary Depressive Disorder, NOS), VA Code 9411, rated at 100%, permanent and stable, not combat related (NCR), combat zone (CZ)

This results in a combined rating of 100%.

Note: The Defense Finance and Accounting Service will complete an audit of Petitioner's records to determine if Petitioner is due any back pay.

That no further changes be made to Petitioner's naval record.

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That a copy of this report of proceedings be filed in 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. 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 Regulations, 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.

9/28/2023

