



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

JCB
Docket No. 5489-22
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 633
(c) 10 U.S.C. § 640
(d) SECNAV M-1850.1, Department of the Navy Disability Evaluation System Manual, September 2019

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) Physical Disability Evaluation System, [REDACTED] Consolidated NARSUM, 4 May 2022
(4) VA Form 21-0819, DoD Referral to Integrated Disability Evaluation System (IDES), 16 February 2022
(5) NAVMED 6100/1, Medical Board Report Cover Sheet, 5 May 2022
(6) Joint Staff Memo 1920, subj: Request for Medical Deferment of Statutory Retirement ICO [Petitioner], 17 May 2022
(7) Joint Staff Memo 1920, subj: Request for Deferment of Statutory/Approved Separation (First Endorsement of Enclosure (6)), undated
(8) NPC Action Memo, subj: Request for 30 day Medical Deferment of Statutory Retirement ICO [Petitioner], 24 May 2022
(9) U.S. Department of Veterans Affairs, Veterans Tracking Application, Integrated Disability Evaluation System (IDES), Case ID: [REDACTED] printed 28 July 2022
(10) Defense Health Agency Memo, subj: Request for Medical Deferment of Statutory Retirement ICO [Petitioner], 20 July 2022
(11) NPC Memo 1000 PERS-00/531, subj: Medical Deferment of Statutory Retirement ICO [Petitioner], 27 July 2022

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, hereinafter referred to as the Board, requesting that his naval record be corrected to reflect that his mandatory retirement date (MRD) was properly deferred until 30 days after completion of his Physical Evaluation Board (PEB), and to reflect that he was retained on active duty continuously pursuant to a properly approved deferral of his MRD.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error or injustice on 29 July 2022 and, pursuant to its regulations, determined that

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the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or 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. Petitioner was commissioned in the Navy and entered active duty service on 21 May 1994. See enclosure (2). As such, his MRD was 1 June 2022 per reference (b).¹

c. In April 2020, Petitioner was diagnosed with left adrenocortical carcinoma with metastasis.² See enclosure (3).

d. On 16 February 2022, Petitioner was referred to the Disability Evaluation System (DES) for his above referenced diagnosis. See enclosure (4).

e. On 5 May 2022, the Medical Evaluation Board referred Petitioner to the PEB for a fitness determination. See enclosure (5).

f. By memorandum dated 17 May 2022, Petitioner's commander requested a deferment of Petitioner's 1 June 2022 statutory MRD until 1 July 2022. See enclosure (6).

g. By undated memorandum, Petitioner's supervisor on the Joint Staff provided a favorable endorsement of the request by Petitioner's commander to defer Petitioner's MRD. Rather than requesting deferment until 1 July 2022, this endorsement specifically stated that Petitioner "should be extended on Active Duty until [his] medical and physical boards are complete." See enclosure (7).

h. On 24 May 2022, the Deputy Chief of Naval Personnel approved the medical deferment of Petitioner's MRD until 1 July 2022. See enclosure (8).

i. Petitioner reached his extended MRD of 1 July 2022 without any action having been taken to extend his MRD beyond that date.

j. On 7 July 2022, the informal PEB found Petitioner medically unfit for continued service. See enclosure (9).

¹ Per reference (b), an officer of the Regular Navy who holds the grade of CDR and who is not on a list of officers recommended for promotion to Captain shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

² Adrenocortical carcinoma is an aggressive form of cancer originating in the cortex of the adrenal gland. Petitioner's condition demonstrated extensive lymphatic and vascular invasion.

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k. By memorandum dated 20 July 2022, Petitioner's PEB Liaison Officer requested further extension to Petitioner's statutory MRD until 1 January 2023.³ See enclosure (10).

l. By memorandum dated 27 July 2022, NPC stated that the request by Petitioner's supervisor to defer Petitioner's MRD until completion of the DES process was overlooked. If this request had not been overlooked, the Commander, NPC, would have forwarded the request to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) with a recommendation for further deferral of the statutory MRD until 30 days after completion of Petitioner's PEB. See enclosure (11).

m. Petitioner contends that the Navy erroneously interpreted references (c) and (d), and as a result his MRD was allowed to expire while he was still in the DES. As a result of his mandatory retirement, Petitioner's DES processing was abated without a final determination of his medical fitness, depriving him of a possible disability retirement and his dependents of the benefits of such a retirement.

n. Reference (c) provides as follows:

If the Secretary of the military department concerned determines that the evaluation of the physical condition of an officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the member's well being before the date on which the officer would otherwise be required to retire ... [in accordance with reference (b)], the Secretary may defer the retirement ... of the officer..."

It further provides that "[a] deferral of retirement ... may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation."

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board finds the existence of an injustice warranting relief.

The Board found a clear injustice in that Petitioner's MRD was allowed to expire without a medical deferment while he was still in the DES for a disabling medical condition through no fault of his own. NPC admitted in enclosure (11) that this occurred due to an oversight. The record reflects that, if NPC had recognized the need to request a deferral from the ASN (M&RA), it would have done so prior to Petitioner's MRD. Given the circumstances of Petitioner's condition, the pendency of Petitioner's PEB, and the favorable recommendation from NPC that would have accompanied this request, the Board determined that the ASN (M&RA) would certainly have approved such a request without hesitation and Petitioner's active duty status would not have been interrupted. Absent the interruption of Petitioner's active duty status, his PEB process would not have been abated prior to a final determination that is likely to

³ This represented the requester's estimate of the time needed to complete the PEB process.

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produce a favorable result for Petitioner and his dependents. Accordingly, the Board found an injustice warranting relief in the circumstances which permitted Petitioner's MRD to be reached without deferment pending completion of the DES process.

RECOMMENDATION:

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

That Petitioner's naval record be correct to reflect that, on a date prior to Petitioner's MRD of 1 June 2022, the ASN (M&RA) received and approved a request to defer Petitioner's MRD to a date 30 days after completion of the DES process. This decision memorandum, issued pursuant to the Board's delegated authority pursuant to reference (a), may serve as evidence of this action in Petitioner's naval record.

That Petitioner's naval records be corrected in any way necessary to reflect that Petitioner remained on active duty continuously beyond his 1 June 2022 MRD pursuant to the approved deferment discussed above, and that his extended MRD will be a date yet to be determined 30 days after completion of the DES process.

That the Defense Finance and Accounting Service conduct an audit of Petitioner's finance records to determine what, if any, adjustments must be made to his pay and benefits as a result of the corrections described herein, and take action as appropriate based upon the results of that audit.

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

That no further corrections be made to 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 forth in SECNAVINST 5420.193 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 on behalf of the Secretary of the Navy.

7/29/2022

[REDACTED]