



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

█
Docket No. 6279-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,
XXX-XX-█ RET

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

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion (AO) package

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 he be transferred to the Permanent Disability Retirement List (PDRL) at a disability rating of 100% and that his retirement pay percentage be changed to 75%.
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 30 November 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 Petitioner's application, enclosure (1), together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies. The Board also considered enclosure (2), which includes the 23 October 2023 AO from a qualified medical professional, Petitioner's response to the AO received on 31 October 2023, and the 17 November 2023 revised AO.
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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.
 - b. A review of Petitioner's reference (b) Official Military Personnel File (OMPF) reveals that Petitioner enlisted in the Navy and served a period of active duty from 28 November 1988 to 4 June 1992, advancing to the rate of Aviation Ordnanceman Second Class, at which time he accepted a commission as a naval aviator. As relevant to this petition, Petitioner served without incident until December 2010. As discussed in greater detail in the enclosure (2), in December 2010, Petitioner was evaluated at █, after he

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suffered a medical event, which indicated multiple embolic Right Middle Cerebral Artery (RMCA) infarcts, and associated symptoms. Petitioner's follow on treatment and diagnosed condition is set forth in greater detail in enclosure (2). Thereafter, having reached sufficient time in service for a regular retirement, Petitioner was retired effective 30 April 2011.

c. In his petition, Petitioner contends he received his regular retirement orders in November 2010, which was prior to experiencing his first of several strokes in December 2010. Petitioner further asserts that his medical event resulted in a total hospitalization time of 60 days at [REDACTED]. According to Petitioner, he was unaware of any options for referral into the disability evaluation system prior to his retirement discharge, and that he should have been referred to a Medical Evaluation Board (MEB) and ultimately reviewed by the PEB for medical disability retirement. Petitioner also cites his Department of Veterans' Affairs (VA) disability rating of 100%.

d. In order to assist it in reaching a decision, the Board obtained an AO on 4 October 2023. The initial AO was considered unfavorable to Petitioner's request. Petitioner provided a response to the AO, which was considered by the preparer of the original AO. On 17 November 2023, the preparer of the original AO revised his recommendation, providing a favorable AO, as follows, in part:

Petitioner provided post-retirement evidence in support of his contention of unfitness citing VA granting service-connection effective May 1, 2011 (day after retirement) for disabling conditions to include Hemorrhage of the Brain (100% disability evaluation), Brain Syndrome (50%), Chronic Adjustment Disorder (50%), as well as multiple related disabling conditions stemming from his strokes. Petitioner provided evidence of post-retirement recurrent strokes and increasing debilitation.

As Petitioner was still in a flight status and had not transitioned to a non-flight related occupational specialty, these conditions, as well as the medications required to treat his medical and mental health conditions disqualified him from aviation duties and likely should have led to referral to a Medical Board (MEB) and onto the Physical Evaluation Board (PEB) for a determination of his fitness for duty to continue to serve. From the range of conditions and occupational impact from his multiple strokes and subsequent residual medical and psychological impairments, it likely his conditions would have overcome the presumption of fitness due to having received his retirement orders, as the severity of his conditions would not have allowed him to continue in a full duty status had he not already been in receipt of retirement orders.

In my medical opinion, Petitioner's medical and psychological conditions, individually and combined, prevented the Petitioner from reasonably performing the duties of their office, grade, rank, or occupational specialty, represented an obvious medical risk to the health of the member or to the health or safety of other members, or imposed unreasonable requirements on the military to maintain or protect the Service member had Petitioner been retained in service. Additionally, at the time of his retirement, the level of occupational impairment due to deficits in

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balance, stamina and endurance, ambulation, memory, cognitive, stress tolerance, anger management (and irritability), and executive mental functioning most closely, as well as personality/behavioral/psychological changes, corresponded to the VA Schedule for Rating Disabilities description of occupational and social disability of "Occupational and Social Impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, and/or mood," which correlated to a 70% disability evaluation.

Should consideration of Petitioner's request for relief be granted, the recommended ion of the record would result in the following, applied to the time of retirement (30 April 2011):

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

1. Embolism of Brain Vessels (Right Middle Cerebral Artery Infarcts with residual impairments), VA Code 8007, rated at 70%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

This results in a disability rating of 70%.

e. The AO concluded, "I have reviewed Petitioner's AO rebuttal and additional documents. In my considered medical opinion, the preponderance of evidence provides sufficient support for Petitioner's contention of unfitness for service at the time of retirement from service. Had referral to the PEB occurred, it is likely Petitioner would have been found to overcome the presumption of fitness due to his pending retirement and a finding of unfit to continue naval service would have been rendered."

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that there was an error in Petitioner's naval record that warrants partial relief. Specifically, the Board substantially concurred with the findings of the AO in concluding that Petitioner record should be changed to reflect his placement on the PDRL pursuant to the recommendation of the AO.

With respect to Petitioner's request to receive a change in his retirement pay percentage to 75%, the Board found insufficient evidence to grant this requested relief.

RECOMMENDATION

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

Petitioner's naval record be corrected by being placement on the PDRL to the date of his retirement (30 April 2011) as follows:

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1. Embolism of Brain Vessels (Right Middle Cerebral Artery Infarcts with residual impairments), VA Code 8007, rated at 70%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

This results in a disability rating of 70%.

The DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's placement on the PDRL and any lawful monies owed.

The Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) with changes as follows: narrative reason for separation: Disability, Permanent; separation program designator: as appropriate; reentry code: RE-3P.

And no other action.

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.

12/19/2023

