



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

██████████  
Docket No. 7172-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN  
██████████

Ref: (a) Title 10 U.S.C. § 1552  
(b) MILPERSMAN 1910-702  
(c) SECDEF Memo of 3 Sep 14 (Hagel Memo)  
(d) PDUSD Memo of 24 Feb 16 (Carson Memo)  
(e) USD Memo of 25 Aug 17 (Kurta Memo)  
(f) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) ██████████ ██████████ Medical Record, 18 Jan 18  
(3) ██████████ Medical Record, 16 Aug 18  
(4) ██████████ Medical Record, 20 Sep 18  
(5) Medical Board, 24 Jan 19  
(6) Line of Duty Determination, 4 Feb 19  
(7) Independent Medical Review, 12 Mar 19  
(8) LCSW ltr, 3 May 19  
(9) ██████████ ltr, 8 May 19  
(10) VA Rating Decision, 27 Jun 19  
(11) IPEB Finding, 16 Jul 19  
(12) Report of Administrative Separation, 21 Aug 19  
(13) DD Form 214, Certificate of Release or Discharge from Active Duty  
(14) Advisory Opinion, 6 Dec 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 that his naval record be corrected by granting a medical retirement with an 80% disability rating; or, in the alternative, an upgrade of his characterization of service to Honorable and his reason for discharge changed to Secretarial Authority.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 14 December 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 the naval records, and applicable statutes, regulations, and policies, to include references (b) through (f).

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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. Petitioner enlisted in the Navy and began active duty service on 28 July 2010. On 5 September 2017, Petitioner was riding his motorcycle (in full protective gear) when he was struck by an errant automobile that did not yield to his right of way and thrown from his motorcycle into the path of another vehicle. He was airlifted to a local hospital, placed in a medically induced coma, and initially treated and stabilized for multiple severe injuries. Upon stabilization, Petitioner was medically evacuated and hospitalized at [REDACTED] Military Medical Center. He was then transferred to the Department of Veterans Affairs (VA) Poly Trauma Unit in [REDACTED], [REDACTED] for an additional month of intensive inpatient treatment, before being discharged to comprehensive outpatient treatment. See enclosure (2).

b. On 16 August 2018, Petitioner was diagnosed with Adjustment Disorder with Depressed Mood in the context of ongoing treatment and chronic pain from multiple traumatic fractures, traumatic brain injury (TBI), and impairment to occupational and social functioning from the severe motorcycle accident. The provider opined Petitioner did not meet retention standards for fitness and suitability for continued service and was currently in the Medical Evaluation Board (MEB) process. See enclosure (3).

c. On 20 September 2018, Petitioner was evaluated for substance use disorder after revealing use of marijuana from July to September 2018. Petitioner had been requesting Marinol (medicinal THC) from his medical providers as the Morphine they prescribed made him sick, nauseated, and unable to eat resulting in sleep disturbance and weight/energy loss. He reported with the Cannabis, he was able to eat without feeling ill and sleeping better. Petitioner had no history of cannabis or other drug use or of alcohol use since the accident. He reported he regretted using the cannabis, but was unable to control his pain and nausea. The examining provider stated, "[Petitioner] does not meet criteria for a Substance Use (Cannabis Use) Disorder diagnosis. This patient used cannabis to control pain and was later prescribed Marinol for his condition." See enclosure (4).

d. On 24 January 2019, Petitioner underwent a medical board, which noted he incurred multiple severe injuries from the September 2017 motorcycle accident rendering him unfit for duty. The MEB referred Petitioner to the Physical Evaluation Board (PEB) for the following conditions: 1) Post Right Tibial Fracture with right lower leg pain; 2) Right Foot Drop with abnormalities of gait and mobility; 3) Post Fracture of the right clavicle with pain; 4) Right Shoulder Arthritis; 5) Chronic Right Wrist Pain post right distal and right ulnar styloid fracture; 6) Right Hand Arthritis with Chronic Right Hand and Finger Pain post fracture with ORIF (Open Reduction Internal Fixation); 7) Post-Traumatic Stress Disorder (PTSD); and 8) Mild Neurocognitive Disorder due to Traumatic Brain Injury (TBI). A Psychiatry Addendum to the MEB narrative summary, based on a comprehensive records review, noted Petitioner did not meet retention standards because of PTSD and Mild Neurocognitive Disorder due to TBI. See enclosure (5).

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e. On 4 February 2019, Commander, ██████████ ██████████ determined Petitioner's injury occurred in the line of duty and was not due to the member's misconduct. See enclosure (6).

f. On 12 March 2019, an Independent Medical Reviewer concluded the medical evidence supported a PTSD diagnosis and not a separate Adjustment Disorder with anxiety and depressed mood. See enclosure (7).

g. In May 2019, Petitioner's Physical Medicine and Rehabilitation provider and Licensed Care Social Worker wrote letters in support of the Petitioner, stating Petitioner had repeatedly asked for Marinol to control his pain and nausea and was denied and that only when his medical team prescribed the Marinol was his pain controlled. See enclosures (8) and (9).

h. On 27 June 2019, the VA service-connected Petitioner for 43 conditions, 27 of which included proposed disability evaluation ratings greater than zero. Chief amongst these proposed service-connected disability ratings were 1) PTSD with depressive disorder and insomnia (also claimed as adjustment disorder with anxiety and depression) with a 70% disability evaluation; 2) TBI (also claimed as mild cognitive impairment and memory loss) at 70%; and 3) Cluster Headaches at 30%. See enclosure (10).

i. On 16 July 2019, the informal PEB found Petitioner Unfit for continued military service and recommended Permanent Disability Retirement from Active Duty at a 40% combined disability rating for: 1) Right Shoulder pain with Decreased Range of Motion (stable) at 20% disability rating; 2) Right Hand/Wrist pain (stable) at 10% disability rating; 3) Right Foot Drop with Abnormalities of Gait and Mobility (stable) at 10% disability rating; and Status Post Right Tibial Fracture with Right Lower Leg Pain (stable) at 0% disability rating. Additionally, PTSD and Mild Neurocognitive Disorder due to TBI were listed as Category III conditions (not separately unfitting and did not contribute to the unfitting condition). See enclosure (11).

j. On 21 August 2019, Commanding Officer, ██████████ ██████████, sent Naval Personnel Command the Report of Administrative Separation, documenting Petitioner's administrative discharge board (ADB) on the basis of Misconduct - wrongful use, possession of THC. The report noted, in accordance with reference (b) screening requirements, Petitioner's record was screened and determined that PTSD/TBI was not a contributing factor to his misconduct. The report also noted that the ADB found the preponderance of evidence supported administrative separation for misconduct-wrongful use, possession of THC, with a General (Under Honorable Conditions) discharge, see enclosure (12). Petitioner was subsequently separated with a General (Under Honorable Conditions) characterization of service, narrative reason of separation misconduct – drug use, on 17 September 2019. See enclosure (13).

k. Petitioner, via counsel, submitted a petition claiming it was erroneous and unjust for the Navy to administratively separate Petitioner vice medically retire him via the Disability Evaluation System (DES). Petitioner argued his command did not follow the Secretary of the Navy's Dual Processing Memorandum of 1 June 2016 mandating a military health care provider give a medical opinion as to whether the medical condition that caused the referral into the DES contributed to a basis for which the member is being separated. Petitioner further argued that there was sufficient evidence in his record that he was unfit for his PTSD and TBI diagnoses but

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unjustly did not have the opportunity to attend a formal PEB hearing to request these conditions to be found Unfit as well. Petitioner included medical records, material service records, and letters of support from his medical providers to support his request.

1. The Board sought an advisory opinion (AO) from a medical professional regarding Petitioner's allegations, enclosure (14). The Physician Advisor found in pertinent part:

In my medical opinion, Petitioner's maladaptive strategy of using marijuana to alleviate his physical and psychological symptoms resulted in great part from the delay of his medical care team to provide the appropriate prescription form of THC (Marinol) as he had requested. The Petitioner's misconduct behavior of using marijuana can be mitigated by his experience of ongoing chronic pain and associated physical distress unrelieved, and in some cases exacerbated, by his treatment regimen and unsuccessful attempts to request medicinal THC.

The AO recommended a correction of the record to show Petitioner as Unfit for the following conditions with placement on the Permanent Disability Retired List (PDRL) effective the date of discharge on 17 September 2019:

1. Right Shoulder Pain with Decreased Range of Motion, VA Code 5024-5201, rated at 20%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
2. Right Hand/Wrist Pain, VA Code 5024-5215, rated at 10%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
3. Right Foot Drop with Abnormalities of Gait and Mobility, VA Code 8520, rated at 10%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
4. Status Post Right Tibial Fracture with Right Lower Leg Pain, VA Code 5299-5262, rated at 0%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)

This results in a combined rating of 40%.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In keeping with the letter and spirit of references (c) through (f), the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about traumatic or stressful events he experienced, and their possible adverse impact on his service, to include whether they qualified Petitioner for the military disability benefits he seeks. The Board concurred with the AO and determined there was ample evidence in Petitioner's record documenting unfitting conditions. The Board determined that Petitioner's disabling conditions, including chronic pain, provided sufficient mitigation for his drug use misconduct, despite his Commanding Officer certifying that Petitioner's record had been screened and determined that PTSD/TBI was not a contributing factor to his misconduct. The

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Board thus concluded Petitioner's administrative separation was also unjust under the circumstances. In addition, the Board concluded there was enough evidence to show Petitioner continues to experience debilitating symptoms and placement on the PDRL is warranted. The Board, concurring with the AO, concluded that Petitioner shall be placed on the PDRL effective upon his release from active duty, and that his characterization of service shall be upgraded to Honorable.

#### RECOMMENDATION

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

That Petitioner be found Unfit and placed on the Permanent Disability Retired List, effective 18 September 2019, at a combined rating of 40% for the following conditions:

1. Right Shoulder Pain with Decreased Range of Motion, VA Code 5024-5201, rated at 20%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
2. Right Hand/Wrist Pain, VA Code 5024-5215, rated at 10%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
3. Right Foot Drop with Abnormalities of Gait and Mobility, VA Code 8520, rated at 10%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
4. Status Post Right Tibial Fracture with Right Lower Leg Pain, VA Code 5299-5262, rated at 0%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that reflects his discharge on 17 September 2019 and transfer to the Permanent Disability Retired List. His characterization of service shall be "Honorable," with an Authority for Separation of "MILPERSMAN 1850-020," with a Narrative Reason for Separation "Disability, Permanent" and SPD of "SJF," and a Reentry Code of "RE-3P."

That Petitioner shall be issued an Honorable Discharge Certificate.

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

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

That no further changes 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.

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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.

1/11/2024

