



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

[REDACTED]  
Docket No: 7849-22  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149  
(2) Memo of Agreement to Stipulation of Fact of 28 Jun 22

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 his naval record be corrected to reflect that his Election of Options (EOO) form was filed timely along with his Department of Veterans Affairs Request for Reconsideration (VARR), such that his case before the Disability Evaluation System (DES) may proceed as if these documents were filed on their due date.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 31 October 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. Petitioner entered the Navy on 13 March 2012 and is currently on active duty. On 28 June 2022, he was scheduled for a hearing before the Physical Evaluation Board (PEB) for determination of fitness within the DES. Prior to the PEB hearing, the PEB and the Petitioner came to an agreement on the terms of a stipulation of his physical condition, in which the parties agreed that the Petitioner would either be separated from service, or retired, based on the findings of the Department of Veterans Affairs (VA). As part of the stipulation, Petitioner was allowed a VARR. According to counsel for the Petitioner, he submitted the VARR to the Council of Review Boards (CORB) on 8 August 2022, which would have made the filing timely. Later in August, Petitioner learned that the EOO was not filed along with the VARR and his VARR was not submitted as stipulated in their agreement. See enclosure (2).

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c. According to a representative of the CORB, the EOO is a document that must be filed contemporaneously with the VARR. The consequences of a service member failing to file an EOO is a presumption that the service member accepted the findings of the PEB. Thus, failing to allow Petitioner to correct his record by filing the EOO would result in the Petitioner being precluded from effectuating the stipulation that he entered into with the PEB, viz., a one-time reconsideration with the VA. This may have significant consequences for the Petitioner. Petitioner's counsel communicated with the PEB to see if it would be able to provide him any relief, and the CORB was not able to assist him, and, through a representative, acknowledged that Petitioner could seek relief from this Board.

#### 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, in accordance with the stipulation that he entered into with the PEB, based on the failure to file the 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 disability records shall be corrected to reflect that he timely filed his EOO, electing his right to submit a VARR, along with his VARR in accordance with the stipulation that he made with the PEB, and that his disability evaluation case shall proceed to being reviewed by the VA. All due process rights associated with the Disability Evaluation System will be afforded to the Petitioner.

And no other relief.

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.

11/7/2022

[REDACTED]

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