



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

█  
Docket No. 3626-23  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149  
(2) Advisory opinion NPC 1850 Ser-95/125 dated 27 Feb 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 being found UNFIT for continued naval service and placed on the Permanent Disability Retirement List (PDRL).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 25 May 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. The Board also considered enclosure (2), an advisory opinion (AO) from Navy Personnel Command (NPC).

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. The Petitioner enlisted in the United States Navy on 7 January 1974. On 30 November 1976, the PEB found Petitioner Unfit for Meniere's Disease and Petitioner was eventually placed on the Temporary Disability Retirement List (TDRL). On 7 July 1978, Petitioner underwent his first periodic physical examination (PPE). In 1981, the Department of Veterans Affairs (VA) confirmed that the VA would continue to rate Petitioner at 100% and granted Petitioner individual unemployability. Petitioner subsequently went to two more PPEs, on 13 August 1981 and 28 November 1984. On 25 July 1985, the Chief of Naval Personnel sent a memorandum to the PEB stating Petitioner did not attend his PPE and recommending that the Petitioner be removed from the TDRL. On 16 August 1985, the PEB again found Petitioner Unfit due to Meniere's disease and directed his placement on the PDRL. On 4 June 1987, an Administrative Remark was placed in Petitioner's OMPF stating, "Pursuant to the action of the Secretary of the

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Navy on 25 July 1985 subject member is hereby removed from the TDRL and discharged from the naval service for the convenience of the government effective 29 Aug 1985 in the rate of YN3.”

c. Petitioner claims he was placed on the PDRL but improperly never received his retirement pay. In addition, he made other requests for relief unrelated to his retirement pay but were addressed via a separate letter.

d. In order to assist it in evaluating the Petitioner’s contentions, the Board obtained an AO, enclosure (2). The AO noted that with a 100 percent VA rating, Petitioner would not have been entitled to Department of Defense (DoD) retired pay despite being in a retired status. “For a Service Member with less than 20 years of service, disability benefits include a monthly pension or stipend from either the VA or the DOD, whichever dollar amount is higher. With less than 4 years of service and a higher VA rating than his DOD rating, [Petitioner] would have been entitled to the higher VA disability stipend.” Consequently, NPC opined that there was no error for Petitioner to not receive DoD pay.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board found that Petitioner’s record contains conflicting documents regarding his TDRL administrative removal. The Board concluded that in the interest of justice, NPC audit Petitioner’s record to ensure the record reflects Petitioner’s correct status and to ensure all entitlements of PDRL were awarded to Petitioner.

Notwithstanding the recommended corrective action below, the Board determined no additional relief related to Petitioner’s request for retirement pay is warranted. In making this determination, the Board found that Petitioner, more likely than not, did not receive any retirement pay based on the fact he was receiving VA compensation greater than his retirement pay. Since this restriction is based in federal statute, the Board determined it had no authority to grant relief.

## RECOMMENDATION

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

That Navy Personnel Command conduct an audit of Petitioner’s record to ensure Petitioner’s record reflects Petitioner’s correct status on the PDRL and to ensure Petitioner was awarded all entitlements corresponding to his PDRL status.

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

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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.

6/15/2023

