



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

█
Docket No. 4358-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █
XXX XX █ USMC (RET)

Ref: (a) Title 10 U.S.C. § 1552
(b) The Joint Travel Regulations

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion by HQMC ltr 4050 LPD-2, 11 Dec 23
(3) Subject's naval record

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 to show Petitioner was reimbursed for his personally procured move (PPM).

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 4 January 2024 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 Petitioner's naval record, and applicable statutes, regulations, and policies.

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. On 18 January 2021, Petitioner was issued Marine Corps Basic Order for involuntary unaccompanied assignment to █ for duty with a report no later than 9 July 2021. Orders have been modified. Per █ denial of accompanied orders: direct Petitioner to transfer and proceed to but report not earlier than 9 June 2021 and report not later than 9 July 2021, █ for duty in billet MOS 1169. These orders were cancelled on 13 June 2021.

b. On 4 November 2021, Petitioner was issued Marine Corps Basic Order for involuntary assignment to █ for duty with a report no later than 18 January 2022. These orders were cancelled on 13 January 2022.

c. On 26 January 2022, Penske issued a Penske Truck Rental statement (83149107) with a pickup date of 26 January 2022 and expected drop-off date of 3 February 2022 charging Petitioner an overall estimated total of \$7,737.62.

d. On 3 February 2022 (12:34), Certified Automated Truck Scale receipt was issued at █ with gross weight of 15,840 lbs.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC (RET)

e. On 21 April 2022, Petitioner was placed in a “Physical Evaluation Board (PEB) referral” duty status.

f. On 19 July 2022, Petitioner was placed in a “PEB case accepted” duty status.

g. On 13 October 2022, Findings of the PEB Proceedings found Petitioner unfit and recommend that he be separated from active duty with severance pay with a combined disability rating of 20%. Furthermore, the disability was incurred while entitled to receive basic pay. The disability did not occur during a period of unauthorized absence. The disability is not the result of intentional misconduct or willful neglect. The disability did occur after 14 Sep 1978. The disability did not result from a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3).

h. On 2 November 2022, Petitioner notified President, PEB that, “[Petitioner acknowledged] receipt of [his] Informal PEB findings and appropriate counseling regarding [his] Election of Options (EOO). [Petitioner understood his] Informal PEB findings and options and choose the following option(s) in accordance with DODI 1332.18w Ch. I, DODM 1332.18 Volumes I & 2, SECNAVINST 1850.4F, and SECNAV M-1850.1.”

“CONTEST FINDINGS. [Petitioner does] not accept the Informal PEB’s findings. [Petitioner requested] a Formal PEB hearing to contest [his] fitness determination.”

i. On 15 February 2023 Findings of the PEB Proceedings found Petitioner unfit and recommend that Petitioner be separated from active duty with severance pay with a combined disability rating of 20%. Furthermore, the disability was incurred while entitled to receive basic pay. The disability did not occur during a period of unauthorized absence. The disability is not the result of intentional misconduct or willful neglect. The disability did occur after 14 Sep 1978. The disability did not result from a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3). All board members concurred. “Due to his current medical condition, [Petitioner] is operationally non-deployable, unable to participate in annual training requirements and unit physical training events. Recommend [Petitioner] be referred to the Integrated Disability Evaluation System. If found unfit for duty and by a PEB, [Petitioner] desires to apply for Temporary Early Retirement Authority (TERA).”

j. On 28 March 2023, Formal Findings of the PEB Proceedings was printed detailing the PEB convened on 15 February 2023. Petitioner was found unfit and was recommended to he be separated from active duty with severance pay with a combined disability rating of 20%. Furthermore, the disability was incurred while entitled to receive basic pay. The disability did not occur during a period of unauthorized absence. The disability is not the result of intentional misconduct or willful neglect. The disability did occur after 14 Sep 1978. The disability did not result from a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3). Formal Board Appeal Denied.

k. On 30 March 2023, Director, Secretary of the Navy Council of Review Boards notified Petitioner that, “[a]fter thorough review of [Petitioner’s] case and in accordance with DoDI 1332.18, SECNAV M-1850.1, ASN M&RA memo “Interim Guidance in accordance with DoDI 1332.18” of 2 Dec 2022, and CORB Policy Letter 2023-01, [Petitioner’s] Formal PEB (FPEB) Appeal, as set forth in [his] FPEB Appeal dated 1 March 2023, is denied.

Following a FPEB hearing, “[Petitioner] appealed from final action of the President PEB (PPEB) who found [him] unfit due to a disability (PAIN IN RIGHT SHOULDER) rated at 20% under VASRD Diagnostic Code (DC) 5003-5201, with a recommended disposition of separation from active duty with severance pay. [Petitioner’s] FPEB Appeal dated 1 March 2023 requested that [he] be found fit for

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC (RET)

continued service, or in the alternative that [he] be granted a new Formal PEB hearing, on the basis that the PPEB's finding is arbitrary and capricious.”

The PPEB noted Petitioner “desire to be found fit, and also considered [his] testimony and belief that [Petitioner] can perform the majority of [his] military duties. Despite [Petitioner] testimony, the PPEB relied and found more persuasive the physical restrictions imposed by [his] medical providers at the Medical Evaluation Board (MEB), the MEB narrative summary, and [Petitioner's] Commanding Officer's non-medical assessment to find [him] unfit for right shoulder pain. [Commanding Officer found] no error, and further find that there is a rational connection between the facts found and conclusion to find [Petitioner's] right shoulder pain an unfitting condition.

[Petitioner's] desire to continue [his] naval career is appreciated. Although [his] appeal will not be granted, if [he is] eligible, [he has] the right to apply to the Deputy Commandant, Manpower and Reserve Affairs for placement on Permanent Limited Duty (PLD).”

1. On 10 April 2023, Petitioner submitted Administrative Action (5216) requesting retirement. In Block 12 (Supplemental Information), Petitioner stated, “[Petitioner is] respectfully requesting to waive [his] PEB Findings and Retire due to having at least 20 years of active service. The following information is provided: TRS Complete: 7 December 2022, Requested retirement date: 31 August 2023, planned detachment date: 31 May 2023, and PEBD: 28 April 2003.”

m. On 10 April 2023, Commanding Officer, Marine Air Control Group 38 via First Endorsement on Petitioner's request dated 10 April 2023 notified commandant of the Marine Corps, Headquarters Marine Corps, Manpower Management Division (MMSR-2) that, “Forwarded, recommending approval. [Petitioner] is waiving his PEB findings due to Marine serving 20 years of active service.”

n. On 10 April 2023, Petitioner notified President, PEB that, “Per chapter 2, paragraph 6 and chapter 4, paragraph 5.b. (10) of SECNAV M—1850.1, and in accordance with ASN (M&RA) Memo of 17 December 2018 and MARADMIN 135/19, [Petitioner requested] to waive [his] PEB evaluation, unfit determination, and medical discharge recommendation made while undergoing Disability Evaluation System (DES) processing. If [Petitioner is] a Marine applying for TERA per SECNAV M—1850.1 and MARADMIN 135/19, [Petitioner is] qualified to submit a waiver because [Petitioner] met all of the United States Marine Corps TERA requirements in accordance with MARADMIN 135/19. Further, per MARADMIN 135/19, if disapproved for TERA, [Petitioner] shall execute disability separation per PEB direction.

By submitting this waiver, [Petitioner] relinquish all statutory/regulatory rights to military disability processing and possible severance pay, possible military disability retirement, and possible tax—free disability retired pay. [Petitioner is] also waiving all rights to be granted limited duty extensions for medical reasons and/or Permanent Limited Duty on active service.

After consultation with legal counsel and a PEB Liaison Officer (PEBLO), [Petitioner requested] to waive [his] PEE evaluation, unfit determination, and medical discharge. [Petitioner was] counseled by Government DES counsel and [his] PEBLO on the DES process and the potential benefits of receiving a medical disability discharge. [Petitioner] hereby voluntarily waive all legal rights under the Department of the Navy DES.

Nothing in this waiver, however, forecloses my ability to be evaluated by the Department of Veterans Affairs for injuries incurred incident to military service.”

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC (RET)

o. On 24 April 2023, Commanding Officer, [REDACTED] notified Petitioner that per MCO 1050.3J and Joint Travel Regulations, he was authorized travel and transportation allowances to his home of Selection in connection with his release from active duty. Petitioner's place from which called/ordered to Active Duty is [REDACTED]; home of record is [REDACTED]; home of selection is [REDACTED]. Expiration of Active Service is 31 August 2023; Planned Detachment Date is 11 June 2023; characterization of service is Honorable, and his separation type is NBD1 with a entry code RE-2C.

p. On 24 April 2023, Petitioner's Application for Do It Yourself Move and Counseling Checklist (DD Form 2278) was created listing a move from [REDACTED] to [REDACTED] with a maximum authorized weight of 14,000 lbs. and Estimated Government Constructive Cost of \$33,036.54. Start date of move was listed as 20 May 2023. It was certified by a counselor.

q. On 24 April 2023, Petitioner signed a PPM Checklist and Expense Certification, listing all operating expenses totaling 9,057.62. "Move Date", "From," and "To" were blank.

r. On 18 May 2023, Commanding Officer, [REDACTED] notified Petitioner that on 31 August 2023, Petitioner will be placed in the Fleet Marine Corps Reserve per the Title 10, U.S.C., and MCO 1900.16. Petitioner has given his permanent mailing address as [REDACTED].

s. Petitioner was transferred to the Fleet Marine Corps Reserve with an Honorable character of service and was issued a DD Form 214, Certificate of Release or Discharge from Active Duty for the period of 28 April 2003 to 31 August 2023 upon having sufficient service for retirement.

t. In the advisory opinion, attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action. The Board concluded per reference (b),¹ Household Goods (HHG) allowances are based on the when orders are effective. The Board agreed with enclosure (2) that Petitioner is entitled to move his HHG in conjunction with his retirement, in accordance with the 24 April 2023 letter from Commanding Officer, [REDACTED]. However, it is inappropriate to use the orders dated 24 April 2023 for the shipment of HHG only, as recommended in enclosure (2), because Petitioner moved his HHG on 26 January 2022. At the time of his move, not only was Petitioner not retirement eligible, but he also had no orders in effect at the time, as his orders for involuntary assignment to [REDACTED] were cancelled nearly 2 weeks prior to his move. Moreover, those orders contained no funding to move HHG. Finally, backdating the orders dated 24 April 2023 is not appropriate because Petitioner began the PEB process in April 2022 and only reached retirement eligibility due to the time it took for Petitioner to contest the PEB results and then request an appeal.

¹ Reference (b), HHG allowances are based on the Permanent Change of Station order's effective date; although, the HHG may be transported as long as the HHG authority remains in effect. The weight allowance is based on the grade held on the effective date of the order authorizing the HHG transportation. See par. 051401 for a Service member reduced in grade. HHG transported after a Permanent Change of Station order is received must be shipped to the proper destination at Government expense if the order is later amended, modified, canceled, or revoked.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC (RET)

Therefore, the Board determined that in order for Petitioner to be authorized a move on 26 January 2022, new orders will be created effective 13 January 2022 that authorize Petitioner to utilize his final HHG move and will be cancelled prior to 21 April 2022, when he was listed as "PEB referral" duty status. The Board further determined that this will allow Petitioner to settle his HHG move for the aforementioned PPM.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

On 13 January 2022, Petitioner was issued Marine Corps Basic Order for involuntary assignment to nearest Marine Corps activity to [REDACTED] for duty with a report no later than 20 April 2022. These orders were cancelled after Petitioner completed move.

That a copy of this report of proceedings will be filed in 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 out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/16/2024

