



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

█
Docket No. 7055-23
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/attachments
(2) Informal Physical Evaluation Board Findings 8 Jun 18
(3) Certificate of Release or Discharge from Active Duty
(4) Petitioner email, 21 Jan 22
(5) Petitioner email, 2 Feb 22
(6) Petitioner email, 14 Feb 22
(7) Memo NPC 1850 Ser 95/730, 3 Nov 22
(8) Petitioner email, 12 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 placement back on the Temporary Disability Retirement List (TDRL) or in the alternative placement on the Permanent Disability Retirement List (PDRL).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 24 October 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.

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 8 June 2018, the Informal Physical Evaluation Board (PEB) found Petitioner Unfit for Ulcerative Colitis at a rating of 30% under Department of Veterans Affairs (VA) Code 7323, enclosure (2). Petitioner accepted the IPEB findings on 12 June 2018, was discharged from the Navy on 27 September 2018, and was subsequently placed on TDRL. See enclosure (3). On 21 January 2022, Petitioner emailed his PEB Liaison Officer (PEBLO) to schedule his Periodic Physical Examination (PPE). See enclosure (4). On 2 February 2022, Petitioner attended the PPE appointment and emailed his PEBLO informing her that he needed to complete a colonoscopy in order to finish his examination. See enclosure (5). On 14 February 2022, Petitioner emailed the PEBLO stating that he completed the colonoscopy. The PEBLO

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
XXX-XX-[REDACTED]

responded stating that Petitioner's package would be sent to Navy Personnel Command (PERS-95). See enclosure (6). On 3 November 2022, PERS-95 sent a letter to the PEB stating Petitioner had exceeded his TDRL anniversary date and must be administratively removed due to failure to report for his PPE. See enclosure (7). On 7 December 2022, the PEB sent a letter to Chief of Naval Personnel requesting Petitioner be administratively removed from TDRL.

b. On 12 February 2023, Petitioner emailed the PEBLO to inquire about the status of his case as he had not received any feedback. He again emailed the PEBLO on 2 March 2023 and did not receive a response. See enclosure (8).

c. Petitioner claims he was erroneously and unjustly removed from TDRL due to his PPE paperwork not being sent to Personnel Command. Petitioner contends he is still unfit for continued naval service and that his condition warrants his return to TDRL or placement on PDRL.

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 determined that the interests of justice support having the PEB conduct a review of Petitioner's case for final adjudication. In reaching this conclusion, the Board noted that Petitioner correctly attended his PPE and documented sending that information to the PEBLO. In addition, the Board observed that Petitioner tried to follow up with the PEBLO to no avail.

Despite the Board's recommendation to grant partial relief as a matter of injustice, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner, including placing him on PDRL. Specifically, the Board found that the issue was not yet ripe based on its decision to reinstate him to the TDRL for a final PEB adjudication.

RECOMMENDATION

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

Petitioner was reinstated to the Temporary Disability Retirement List effective the date of this letter. The sole purpose of his reinstatement is so he may undergo a physical examination, if necessary, and have the Physical Evaluation Board make a final determination of his disability status in accordance with Title 10, U.S. Code, Section 1210. All due process rights associated with the Disability Evaluation System will be afforded to the Petitioner as part of the Physical Evaluation Board review.

That no further changes be made to Petitioner's naval record.

That a copy of this report of proceedings 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.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
XXX-XX-[REDACTED]

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.

11/23/2023

