



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

█
Docket No. 7353-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
█ XXX XX █ USMC

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/ attachments
(2) Informal Physical Evaluation Board Finding, 12 Jul 20
(3) SECNAVCORB Memo 1850 PEB Index M22000512, 30 Jul 20
(4) HQMC Notification Memo 1850/MMSR-4, 11 Apr 22
(5) Informal Physical Evaluation Board Finding, 28 Dec 23
(6) Election of Options Form, 25 Jan 23
(7) SECNAVCORB Memo 1850 PEB Index M22300065, 13 Feb 23
(8) Email PEB 26 Jan 23 to 24 Apr 23
(9) █ Statement, 16 Aug 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 him a formal Physical Evaluation Board (PEB) hearing.

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 12 July 2020, the Informal Physical Evaluation Board (IPEB) found Petitioner unfit for continued duty due to low back pain at a rating of 40% under Department of Veterans Affairs (VA) Code 5010-5243. See enclosure (2). Petitioner accepted the IPEB findings on 15 July 2020 and was subsequently placed on the Temporary Disability Retirement List (TDRL). See enclosure (3). On 11 April 2022, Headquarters Marine Corps notified Petitioner to attend a Periodic Physical Examination (PPE). See enclosure (4). Petitioner attended his PPE on 14 July 2022 and the IPEB reviewed his case on 23 December 2022. The IPEB determined Petitioner

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was still unfit; however, the IPEB reduced his rating to 20%, necessitating separation with severance pay from TDRL. See enclosure (5). On 25 January 2023, the PEB administrative staff sent Petitioner his findings as well as an Election of Options (EOO) form to sign either accepting his IPEB findings or requesting a formal board hearing. On 26 January 2023, Petitioner emailed PEB administrative staff his EOO form, stating that he did not accept the finding and requesting a hearing. See enclosure (6). On 13 February 2023, PEB sent a letter to Headquarters Marine Corps requesting Petitioner to separate the Petitioner from TDRL. See enclosure (7).

b. On 21 April 2023, Petitioner's District Injured Support Coordinator (DISC) emailed the PEB requesting cancellation of Petitioner's removal from TDRL, attaching Petitioner's EOO form, however the PEB denied the request, enclosure (8).

c. Petitioner argues he was erroneously and unjustly denied his right to have a formal board hearing due to a PEB administrative mistake. Petitioner included a statement from his DISC, enclosure (9), confirming Petitioner sent his EOO form in a timely manner and that the PEB erroneously did not grant Petitioner a hearing.

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 an error occurred in the processing of Petitioner's case. Specifically, the PEB did not schedule Petitioner for a formal board hearing despite Petitioner sending the EOO form to the PEB in a timely manner. This action resulted in Petitioner being denied due process and being unjustly removed from the TDRL. As a result, the Board determined it was in the interests of justice to grant Petitioner's request for a formal PEB hearing.

RECOMMENDATION

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

That the PEB grant Petitioner a formal board hearing with all associated due process rights afforded by the Integrated Disability Evaluation System.

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.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the

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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.

11/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]