



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

█
Docket No. 10502-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █ █
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Ref: (a) Title 10 U.S.C. § 1552
(b) Official Military Personnel File

Encl: (1) DD Form 149 w/attachments

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 directing that he be placed on the permanent disability retired list (PDRL).

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 18 January 2024, and pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, 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. According to the reference (b) official military personnel file (OMPF), Petitioner enlisted in the Marine Corps and commenced active duty on 12 April 2005. On 5 September 2008, Petitioner was placed on the temporary disability retired list (TDRL). On 22 March 2011, Petitioner was administratively removed from the TDRL. On 13 November 2013, Petitioner was reinstated to the TDRL and ordered to attend a periodic physical examination. On 2 December 2013, Petitioner was administratively removed from the TDRL for failing to attend his periodic physical examination. According to Petitioner, the periodic physical examination was scheduled to take place at a distance that made it impossible for him to attend. In 2015, Petitioner sought relief from this Board, which was denied on 26 October 2015. In 2016, Petitioner again sought relief from this Board, which was denied on 6 October 2016. In 2019, Petitioner again sought relief from this Board, which was denied on 12 November 2019.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

b. In order to assist it in reviewing this petition, the Board obtained from the Physical Evaluation Board a review of applicable interval Department of Veterans' Affairs (VA) clinical records and ratings. According to this review, Petitioner has undergone three left shoulder surgeries, therapeutic injections, occupational therapy, and continues to require treatment, to include emergency pain assessment and treatment, for his bilateral shoulder condition. VA physical medicine rehabilitation notes from 2011 show left shoulder flexion limited to 70 degrees. Limitation of motion of the non-dominant left shoulder to 90 degrees flexion warrants a 20% rating under DC 5201. VA clinical records also establish painful motion of the right shoulder joint. 38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint.

CONCLUSION

As a result of its review of applicable records, the Board determined that the available records demonstrated that Petitioner has remained unable to perform the duties of his office, grade, rank, or rating since his 2008 placement on the TDRL. Therefore, Board concluded that it would be appropriate for Petitioner to be placed on the PDRL as follows:

Unfitting Conditions:

1. LEFT SHOULDER INSTABILITY, DC 5201 rated at 20% (bilateral factor applied)
Related unfitting conditions (unfitting conditions that reflect the same disability under varying diagnoses or descriptive terms are categorized as Related Category 1 Diagnoses IAW the anti-pyramiding regulation of 38 CFR § 4.14.):

STATUS POST LEFT SHOULDER ARTHROSCOPY WITH CAPSULAR
PLICATION CHRONIC LEFT SHOULDER PAIN

2. RIGHT SHOULDER INSTABILITY, DC 5201 rated at 20% (bilateral factor applied)

Non-CZ/Non-CR

This results in a combined rating of 40%

RECOMMENDATION

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

That Petitioner be placed on the PDRL effective the date that he was removed from the TDRL for the following conditions:

1. LEFT SHOULDER INSTABILITY, DC 5201 rated at 20% (bilateral factor applied)
Related unfitting conditions (unfitting conditions that reflect the same disability under varying diagnoses or descriptive terms are categorized as Related Category 1 Diagnoses IAW the anti-pyramiding regulation of 38 CFR § 4.14.):

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

STATUS POST LEFT SHOULDER ARTHROSCOPY WITH CAPSULAR
PLICATION CHRONIC LEFT SHOULDER PAIN

2. RIGHT SHOULDER INSTABILITY, DC 5201 rated at 20% (bilateral factor applied)

Non-CZ/Non-CR

This results in a combined rating of 40%.

The Defense Finance and Accounting Service will complete an audit of Petitioner's pay records to determine Petitioner's pay entitlements.

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 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.

2/7/2024

