



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

[REDACTED]
Docket No: 3320-16
JUN 05 2017

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

Subj: REVIEW OF NAVAL RECORD ICO
FORMER MBR [REDACTED] XXX-XX-[REDACTED] USMC

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to change his narrative reason for separation to disability or place him on the disability retirement list.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 May 2017 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, naval records, and applicable statutes, regulations and policies. The Board also considered the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards ltr 5220 CORB: 002 of 3 Mar 2017; a copy of which was provided to Petitioner for comment.
3. 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.
 - b. Petitioner entered active duty with the Marine Corps in July 2011 and served as a field artillery cannoneer. By April 2013, he was determined to be unable to continue his duties due to a scoliosis condition that preexisted his entry into the Marine Corps. As a result, he was discharged on 10 June 2013 due to a condition not a disability.
 - c. Post discharge, the Department of Veterans Affairs (VA) rated his back condition as 10% disabling.
 - d. In his advisory opinion, the Director, Secretary of the Navy Council of Review Board recommends partial relief for the Petitioner. He based his recommendation to grant a 10% disability rating for thoracolumbar spine strain with scoliosis on the lack of evidence to rebut the presumption that Petitioner's pre-existing scoliosis condition was not aggravated by his military

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service. He also bases his disability rating recommendation on the rating issued by the VA upon Petitioner's discharge.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following partial corrective action.

The Board substantially concurred with the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards ltr 5220 CORB: 002 of 3 Mar 2017. Petitioner's condition was a qualifying disability under SECNAVINST 1850.4E and should have been referred to the Disability Evaluation System. As stated in the advisory opinion, had he been referred to the Physical Evaluation Board, he would have been found unfit for continued naval service and rated at 10% consistent with the disability rating issued by the VA in 2013. Based on these findings, the Board concluded that Petitioner's placement on the Disability Retirement List is inappropriate since he does not warrant a disability rating of 30% or greater.

RECOMMENDATION

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

a. Petitioner was found unfit for continued naval service due to Thoracolumbar spine strain with Scoliosis, VASRD 5299-5239, with an assigned disability rating of 10% effective 10 June 2013. His DD Form 214 shall be amended to reflect the change in narrative reason. No other change is required.

b. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. It is certified that 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.

[REDACTED]
Recorder

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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]
Executive Director