



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

[REDACTED]  
Docket No: 4273-16  
MAY 24 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) HQMC memo 1400 MMSR-4 dtd 22 Feb 17

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 grant him retirement under TERA, waive his CSB recoupment, and grant him Combat Related Special Compensation (CRSC).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 April 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. In addition, the Board considered the advisory opinion contained in enclosure (2); 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, with the exception of his request for CRSC, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner was found unfit for continued naval service by the Physical Evaluation Board on 31 July 2012 for a qualifying condition. He elected to be placed on permanent limited duty until 29 April 2013 at which time he was separated with severance pay due to his disability.

c. Prior to the consideration of his case by the PEB, Petitioner applied for CSB on 26 January 2012 despite being unfit for full duty and entered into the Disability Evaluation System. CSB policy dictated that servicemembers not fit for full duty were ineligible for CSB. In applying for CSB, Petitioner acknowledged he would be required to repay the CSB if he was determined to be ineligible.

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d. Petitioner was erroneously paid CSB and requested a waiver of recoupment to the Secretary of the Navy that was denied by Deputy Assistant Secretary of the Navy, Military Personnel Policy.

e. On 18 October 2012, Petitioner requested retirement under TERA. According to the advisory opinion provided by Headquarters, U.S. Marine Corps, existing policy at the time did not allow service members to waive PEB findings and request TERA retirement. This policy has changed and Petitioner would have qualified for retirement under TERA under current policy. In addition, the advisory opinion states that Petitioner's TERA retirement request was improperly staffed and denied.

## 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 concluded that the interests of justice warrant granting Petitioner retirement under TERA. As pointed out in the advisory opinion, Petitioner's request was not properly considered by the Marine Corps and the policy has changed to allow what Petitioner is now requesting regarding a TERA retirement in lieu of a disability separation.

However, regarding his request for a CSB recoupment waiver, the Board concluded that no error or injustice exists in his record. Petitioner was not eligible for CBS and did not serve out 20 years of service, thus the Board determined that a recoupment waiver was inappropriate. In making their finding, the Board substantially concurred with the advisory opinion contained in HQMC memo 1400 MMSR-4 of 22 February 2017 and the decision memo signed by the Deputy Assistant Secretary of the Navy, Military Personnel Policy.

Further, the Board concluded that Petitioner failed to exhaust his administrative remedies regarding his request for CRSC and did not consider his request. Petitioner may apply for CRSC to the CRSC Board after the implementation of his retirement. If he should be unsatisfied with the CRSC Board's decision, he may reapply to this Board with supporting evidence of an error in his record.

## RECOMMENDATION

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

Petitioner was retired under the Marine Corps Enlisted Temporary Early Retirement Authority effective 29 April 2013 in lieu of his disability separation. No other relief is granted.

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

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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