



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

[REDACTED]
Docket No: 6734-16
MAR 27 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 reopen his Physical Evaluation Board (PEB) in order to allow him to contest the findings.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 23 February 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.
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 was placed on the Temporary Disability Retirement List (TDRL) due to Post-Traumatic Stress Disorder (PTSD) and Post-Traumatic Headaches on 30 June 2012. After being retained on the TDRL after his first periodic examination, Petitioner attended a second periodic examination on 4 September 2014 that found he was still suffering from his PTSD and headache symptoms despite performing extremely well academically while attending college.
 - c. On 16 December 2015, the PEB lowered the Petitioner's combined disability rating to less than 30% and recommended his discharge from the Marine Corps. The PEB findings were mailed to his old address that the Petitioner attempted to change through Headquarters U.S. Marine Corps.
 - d. On 31 January 2016, Petitioner was discharged due to his disability with severance pay consistent with the PEB findings. He was informed after receiving forwarded mail from his old address.

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e. In regard to Petitioner's request for a personal appearance, the Board determined that a personal appearance was not necessary and considered the case based on the evidence of the record.

CONCLUSION

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

The Board concluded sufficient mitigation evidence exists to reopen Petitioner's PEB case in order to notify him a second time and allow him to elect his rights regarding the PEB's findings in his case. This determination was made based on the due diligence exercised by the Petitioner to inform the proper military authorities of his correct mailing address. Once a second notification is made, Petitioner's case should be processed in accordance with applicable regulations, e.g. 15 days to respond to PEB findings. The Board did not find sufficient evidence to support a finding that Petitioner should be placed on the Permanent Disability Retirement List. The fact Petitioner continues to suffer from symptoms related to PTSD and Post-Traumatic Headaches was insufficient to find that the PEB decision to lower his disability rating was incorrect. However, the Board determined that Petitioner should be offered the opportunity to present supporting evidence to the PEB should he choose to exercise his due process rights.

RECOMMENDATION:

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

a. Petitioner's PEB case is reopened effective the date of this letter to allow him to submit his election of rights regarding the PEB findings of 16 December 2015.

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