



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

[REDACTED]  
Docket No: 5115-17

APR 09 2018

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  
(3) Director, Secretary of the Navy Council of Review Boards ltr 1910 CORB: 002 of 12 February 2018

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 place Petitioner on the disability retirement list. Petitioner's case was reconsidered in accordance with procedures that conform to *Lipsman v. Secretary of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). He was previously denied relief by this Board on 5 May 2016.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 March 2018 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 Petitioner's naval records, and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards ltr 1910 CORB: 002 of 12 February 2018; a copy of which is attached as enclosure (3).

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 February 2001. He began to experience foot pain in 2008 that resulted in multiple surgeries and periods of limited duty through 2014. However, he was medically cleared by the Marine Corps on 17 April 2014 prior to his discharge on 30 June 2014. He was issued a RE-3C reentry code due to his inability to be world-wide deployable due to physical limitation associated with his medical conditions.

c. Upon Petitioner's discharge from the Marine Corps, the Department of Veterans Affairs (VA) issued disability ratings to the Petitioner in 2015 for a number of service connected



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XXX XX [REDACTED]

disabilities. Included in those disability ratings were Idiopathic neuropathy ratings for both lower extremities at 20% each.

d. Petitioner applied for military disability retirement benefits from this Board in 13 March 2015. As part of this Board's review, it requested an advisory opinion from Director, Secretary of the Navy Council of Review Boards on whether Petitioner was unfit for continued naval service at the time of his discharge from the Marine Corps. Director CORB opined that insufficient evidence existed to find Petitioner was unfit and asserted that the Physical Evaluation Board likely would have found him fit had his case been referred to them. This Board substantially concurred with the opinion based primarily on the 17 April 2014 medical examination that cleared Petitioner for separation despite the existence of his bi-lateral leg condition.

e. Petitioner filed his current request for reconsideration with new evidence from a neurologist that Petitioner was unfit for continued naval service at the time of his discharge due to the neuropathic condition in both his legs.

f. Director, Secretary of the Navy Council of Review Boards provided another advisory opinion on 12 April 2018 that recommended placing Petitioner on the Permanent Disability Retirement List (PDRL) for his bilateral neuropathic leg condition. He based his change of opinion on evidence the Petitioner was unable to perform a full Physical Fitness Test for two years prior to his discharge, had significant restrictions on duty assignments, and was missing significant duty time due to his medical condition.

## 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 substantially concurred with the most recent advisory opinion provided by Director, Secretary of the Navy Council of Review Boards. While there was evidence Petitioner was able to perform his military duties despite symptoms related to his neurological condition, the Board determined that the non-medical assessment provided by the command on 11 October 2013 shows that Petitioner was routinely missing half of his work week due to his medical condition. While it's possible that his condition may have improved over the next seven months prior to his separation physical, the Board felt the interests of justice merited Petitioner's placement on the PDRL as recommended by the advisory opinion. The Board concluded that Petitioner was unfit for continued naval service due to his bilateral neuropathy condition as evidenced by the 6 September 2014 electromyogram and nerve conduction report that showed reduced peroneal motor response amplitudes in isolation and the ratings issued by the VA for idiopathic neuropathy in each lower extremity.

## RECOMMENDATION

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

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XXX XX [REDACTED] USMC

Petitioner was placed on the PDRL for bilateral lower extremity neuralgia, VASRD 8721, 20% each for a combined rating of 40%, not combat-related, effective 1 July 2014. A copy of this Report of Proceedings will 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.

[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