



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

[REDACTED]
Docket No: 7989-17

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

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 him on the disability retirement list.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 22 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.

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 reentered the Marine Corps in December 2007 after a previous active duty enlistment and period of inactive Reserve service. By 2012, he was suffering from pain to his left foot due to a hammertoe condition with several toes. Petitioner underwent surgery on his left foot on 10 February 2012 and a second surgical procedure on 7 November 2012. Despite the surgical intervention, Petitioner continued to suffer from foot pain and was placed on Limited Duty on 12 June 2013.

c. While undergoing treatment for his foot condition, Petitioner requested to be released pursuant to a Voluntary Early Release Program. His request was approved and he was medically returned to full duty status on 29 August 2013 so he could be released from the Marine Corps. On 18 September 2013, Petitioner was discharged pursuant to his request and issued a RE-1A reentry code consistent with his full duty status.

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

d. Post-discharge, Petitioner chose to undergo another surgical procedure in 2014 to address a suspected Morton's neuroma in his left foot. Eventually, Petitioner chose to amputate his lower left leg, below the knee, in 2015 to eliminate the pain he was experiencing in his left foot.

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 sufficient injustice exists in Petitioner's record to justify his placement on the Permanent Disability Retirement List (PDRL). Despite the fact the Board could find no evidence the Marine Corps improperly discharged Petitioner or that the standard of care was not met in the treatment of his left foot condition, the Board was sympathetic to Petitioner's current circumstances. The Board took into consideration that Petitioner was discharged from active duty, albeit on his own request, despite an extensive history of left foot pain and treatment. Considering the totality of circumstances, the Board felt it was appropriate to place Petitioner on the PDRL to eliminate an injustice that exists in Petitioner's case due to his eventual loss of his left leg below the knee.

RECOMMENDATION:

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

Petitioner was placed on the Permanent Disability Retirement List for Leg, Amputation at a Lower Level, Permitting Prosthesis, VASRD 5165, at a 40% disability rating, effective 19 September 2013.

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