



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

█
Docket No. 2794-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
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Ref: (a) Title 10 U.S.C. § 1552
(b) Petitioner's Official Military Personnel File

Encl: (1) DD Form 149
(2) Advisory Opinion, 1 Apr 24

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by granting a permanent medical retirement.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 16 May 2024, 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 the naval records, and applicable statutes, regulations, and policies to include the enclosure (2) advisory opinion (AO) furnished by a qualified medical professional, a copy of which was provided to Petitioner and to which he did not provide a response.

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 in the United States Marine Corps on 21 February 2017. On 23 April 2021, a Medical Evaluation Board (MEB) referred Petitioner to the Physical Evaluation Board (PEB) for the diagnosis of Other Forms of Scoliosis, Thoracolumbar Region citing continued mid-back pain due to scoliosis that was unresponsive to a full range of treatment. On 30 June 2021, the Department of Veterans Affairs (VA) issued a 20% proposed rating for the spondylosis. On 31 August 2021, Petitioner went to the emergency room complaining of muscle weakness in his legs and chest pain. He repeatedly went to the hospital in September 2021 due to the following symptoms: dysphagia (trouble swallowing), impaired gait due to weakness to bilateral lower extremities, and paresthesia (numbness/pain) to hands, feet, and eventually his face. On 30 September 2021, the informal PEB (IPEB) found Petitioner to be Unfit for service and recommended separation from active duty with severance pay at a 20% disability evaluation for the unfitting condition of Other Forms of Scoliosis, Thoracolumbar Region (Stable) VA Diagnostic Code 5299-5239. On 4 October 2021, Petitioner accepted his IPEB findings.

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[REDACTED]

c. Petitioner was diagnosed with Guillain-Barre Syndrome (GBS) and from October 2021 underwent numerous hospitalizations due to increased symptoms from the neurological condition. Treatment included Intravenous Immunoglobulin Infusion and Intravenous Steroid Infusion, physical and occupational therapy, multiple courses of medications (to include Gabapentin and Tricyclic Antidepressants for chronic pain), and intensive specialty follow-up with Neurology, Family Medicine, and Operational Medicine providers. On 14 January 2022, Petitioner's medical and neurological care was transferred from [REDACTED] to [REDACTED]. [REDACTED] Petitioner was extended past his initial separation date of 15 January 2022 for continued evaluation and treatment of his GBS. A clinical note from 26 January 2022 indicated the plan was for him to be placed on a Limited Duty Board to allow definitive diagnosis by the [REDACTED] Neurology which would then refer him to a MEB for GBS and Mid-Back Pain (Scoliosis) for adjudication of the unfitting conditions.

d. A 28 January 2022 medical note indicated Petitioner was found not eligible for Limited Duty or Reevaluation for referral to PEB as he had already been medically separated from the Marine Corps, although still on orders to remain for treatment through May 2022. On 30 March 2022 Petitioner was discharged at a 20% rating. On 9 June 2022, the VA rated Petitioner's Scoliosis at 40%; GBS (Vertigo and RLE Radiculopathy) at 20%, chest pain at 20% and difficulty swallowing at 10%, effective 31 March 2022.

e. Petitioner requests placement on the Permanent Disability Retired List (PDRL); he contends that his Thoracolumbar Scoliosis was inadequately evaluated and adjudicated by the MEB and PEB; in that he should have had his cervical spine condition included in his original PEB findings of 30 September 2021 and his Thorocolumbar Spondylosis should have been rated at 40%. Moreover, he contends he should have been referred to the PEB for GBS and placed on the medical retired list.

f. The Board sought an advisory opinion (AO) from a qualified medical professional regarding Petitioner's allegations. The physician reviewed Petitioner's records and opined that Petitioner's referred unfitting condition, Scoliosis, was appropriately identified and referred to the PEB for determination of fitness for duty. The AO noted the appropriate medical and administrative authorities reviewed Petitioner's clinical history and VA Proposed Ratings and recommended no further conditions, to include cervical spondylosis, were suitable for referral to the PEB as unfitting for service. However, the AO did note Petitioner developed GBS while on active duty and referral for adjudication of his fitness for duty for GBS would likely have occurred had he not been in the final phases of medical separation for his other unfitting condition.

The AO concluded Petitioner did incur while on active duty a neurological condition that impaired his ability to execute the duties of his office, grade, rank, MOS, and rating, specifically GBS. The AO stated that, "[s]hould consideration of Petitioner's request for relief be granted, the recommended correction of the record would result in the following, applied to the time of discharge (30 May 2022):

Unfit with placement on the Permanent Disability Retired List (PDRL):

1. Other Forms of Scoliosis, Thoracolumbar Region (Stable) VA Diagnostic Codes 5299-5239, rated at 20%, permanent and stable, not combat related (NCR), non combat zone (NCZ)

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2. Guillain-Barre Syndrome (to include residuals of Vertigo, Right Lower Extremity Radiculopathy, and Difficulty Swallowing), VA Code 8011, rated at 20%, permanent and stable, not combat related (NCR), non combat zone (NCZ)”

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. The Board substantially concurred with the AO that there was ample evidence in Petitioner’s record documenting that at the time of Petitioner’s discharge from service, he had developed Guillen-Barre Syndrome with residual neurologic sequelae that rendered him unfit for service.

However, the Board found there was insufficient support for Petitioner’s contention that at the time of his discharge he should have received a finding of unfit for his cervical spondylosis, and a higher disability rating for his thoracolumbar scoliosis.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

Petitioner be found Unfit and placed on the Permanent Disability Retired List at a combined rating of 40%, effective the date of his discharge on 30 March 2022, for the following conditions:

1. Other Forms of Scoliosis, Thoracolumbar Region (Stable) VA Diagnostic Codes 5299-5239, rated at 20%, permanent and stable, not combat related (NCR), not combat related (NCR), not combat zone (NCZ)
2. Guillain-Barre Syndrome (to include residuals of Vertigo, Right Lower Extremity Radiculopathy, and Difficulty Swallowing), VA Code 8011, rated at 20%, permanent and stable, not combat related (NCR), non combat zone (NCZ)

Change Petitioner’s narrative reason for separation and associated separation code to transfer to the PDRL. Note: Headquarters, U.S. Marine Corps will correct any other entries affected by the Board’s recommendation and will issue a DD Form 215 or a new DD Form 214, whichever one they deem appropriate, that reflects the Board’s corrective action.

The Defense Finance and Accounting Service will complete an audit of Petitioner’s pay records to determine Petitioner's pay entitlements.

That a copy of this report of proceedings be filed in Petitioner’s naval record.

That no further changes be made to 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.

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 Regulation, Section 723.6(e)) and having

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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.

6/25/2024

[REDACTED]