



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

█  
Docket No. 2982-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
XXX XX █ USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) Official Military Personnel File

Encl: (1) DD Form 149 w/attachments  
(2) Advisory Opinion dtd 25 March 2024

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), seeking to be reviewed by the Formal Physical Evaluation Board (PEB).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 11 April 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 Petitioner's application, enclosure (1), together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies. The Board also considered the enclosure (2), the advisory opinion (AO) from a qualified medical professional.

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. A review of Petitioner's reference (b) Official Military Personnel File (OMPF), Petitioner enlisted in the Marine Corps and commenced active duty on 31 August 2009. Petitioner was deployed to Afghanistan and participated in Operation Enduring Freedom from December 2010 to July 2011. He received nonjudicial punishment, on 17 April 2011, for leaving his post without being relieved and, on 13 September 2011, for failing to obey an order or regulation and for drunken or reckless operation of a vehicle. Subsequently, Petitioner received several written warnings concerning his behavior, including for driving after hours in contravention of his driver's license restrictions in 2012, for driving a vehicle with a suspended license in 2014, for

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failing to report to a place of duty in 2014, and, in September 2014, he was arrested in [REDACTED] for discharging and carrying a firearm and for failing to return his Battalion by the prescribed time.

c. On 17 October 2014, Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He elected his right, among others, for an administrative board.

d. On 27 October 2014, the Regimental Surgeon in Petitioner's unit wrote to the Petitioner's Commanding General, stating:

1. As required by the reference, I have reviewed the medical records of the subject-named member (SNM) for evidence of PTSD [post-traumatic stress disorder] and TBI [traumatic brain injury]. SNM is pending processing for involuntary administrative separation.

2. SNM has had multiple combat deployments since entering the USMC.

3. I have reviewed the available medical records and Deployment Health Assessment Database. SNM has been diagnosed with TBI and PTSD. SNM has received treatment for TBI and PTSD.

e. On 13 January 2015, Petitioner's Regimental Surgeon again wrote to Petitioner's Commanding General:

1. SNM is pending processing for involuntary administrative separation. He currently had a Physical Evaluation Board (PEB) reject his claim and medical separation. SNM is currently in the process of appealing the findings of the board, and has the support of two of his medical specialists. At this time the Marine refuses to allow the Regimental Surgeon to conduct a final physical which is needed for his administrative separation. SNM states after his appeal and resubmission of his PEB, that he will allow a final physical to be conducted.

2. SNM has had one combat deployment since entering the USMC. He deployed to Afghanistan in 2010.

3. I have reviewed the available medical records of SNM. SNM has been diagnosed with PTSD, depression, anxiety, traumatic brain injury and chronic low back pain. His medical history is complex, and he is currently seeing multiple providers in the fields of Psychiatry, Neurology, Sports medicine and Physical Therapy. Based on review of his medical records I would state a PEB if submitted properly would be accepted. However the Marine's legal issues hold precedence.

f. Despite documentation in Petitioner's OMPF that he selected an administrative board, there is no documentation relating to any board findings. On 15 January 2015, Petitioner's commanding general informed Commandant of the Marine Corps that Petitioner was to be discharged with an Other Than Honorable characterization of service due to misconduct. The

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same day, the lawyer for the commanding general explained that the proceedings related to Petitioner were correct in law and fact. On 20 March 2015, Petitioner was discharged with a General (Under Honorable Conditions) characterization of service due to completion of required active service. There is no indication in his OMPF to explain Petitioner's narrative reason of service, despite the fact that he was processed for a misconduct discharge. His OMPF does not appear to contain his original Certificate of Release or Discharge from Active Duty.

g. Post-discharge, Petitioner filed an application with the Navy Discharge Review Board (NDRB) seeking to have his discharge characterization upgraded to Honorable. On 3 March 2016, the NDRB denied Petitioner's request. He subsequently filed a petition with this Board seeking to have his discharge characterization upgraded. In connection with reviewing Petitioner's request, the Board obtain an AO from a medical professional, which found that PTSD and TBI were causative factors in Petitioner's misconduct. Thus, by letter dated 14 May 2019, the Board notified petitioner it had granted his request, upgraded his discharge characterization to Honorable, and changed his narrative reason for discharge to Secretarial Authority.

h. Despite the grant of relief by this Board in 2019, Petitioner filed another application with the NDRB in 2022 seeking to have his discharge upgraded to Honorable. As noted, this Board already upgraded Petitioner's discharge characterization and changed his narrative reason to Secretarial Authority.

i. In his current petition, Petitioner requests that he be reviewed by a Formal PEB. In support of his request, he contends that he is still suffering from PTSD and TBI.

j. In order to assist it in reaching a decision, the Board obtained the enclosure (2) AO, which was considered favorable to Petitioner's request. According to the AO:

Petitioner's in-service diagnoses and treatment of PTSD, TBI (and Residual TBI conditions of Post-Traumatic Headaches and Migraines), as well as Chronic Low Back Pain were well documented in his service record, including referral to MEB and PEB, and request for FPEB hearing. Following PEB finding of FIT for continued service, Petitioner filed a request for Formal PEB hearing and was prepared to present multiple medical opinions rebutting the MEB and PEB findings from several of his treating medical and mental health providers who opined he was unfit from these conditions. Notably, his request for Independent Medical Review of the MEB findings/recommendations was denied, primarily as the reviewing medical officer (senior military psychiatrist) felt the clinical record as a whole spoke for itself in supporting the diagnoses of PTSD, TBI (and possibly other medical conditions) and the Unfitting nature of these conditions.

Petitioner was granted a Formal PEB hearing date but was administratively separated before the FPEB hearing date based on a series of counseling statements for misconduct behaviors (additive to two NJP's three years prior) amounting to a pattern of misconduct. It is notable that the final narrative reason for separation (per available DD-214) was end of obligated service with a characterization of

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service of General (Under Honorable Conditions), a quite different final disposition than communicated to the President, PEB as rationale for terminating his PEB process.

\* \* \*

In 2016, the VA granted service-connection for TBI with PTSD, Generalized Anxiety Disorder, and Major Depressive Disorder at 70% evaluation; Degenerative Disc Disease Cervical Spine at 20% evaluation; and Post-Traumatic Headaches at 0% evaluation effective the day after his discharge from service based on the clinical evidence contained in his service records.

Commander's NMA indicated his conditions of PTSD, TBI and back and shoulder pain prevented him from carrying out his duties required by his MOS and Marine Corps service.

\* \* \*

After review of the clinical record, Petitioner's level of disability due to PTSD at the time of his discharge is assessed as most closely correlating to the VA defined level of impairment of "Occupational and Social Impairment with Reduced Reliability and Productivity" which would correspond to a 50% disability evaluation.

After review of the clinical record, Petitioner's level of disability due to Residuals of TBI at the time of his discharge is assessed as most closely correlating to the VA defined disability evaluation of 10% due to impairments in facets of TBI of Memory/Attention/Concentration/Executive Function Facet (complaints of memory loss, decreased concentration and attention at a score of 1 (mild)), Subjective Symptoms Facet (symptoms/condition of headaches, insomnia at a score of 1(mild)), and Neurobehavioral Facet (irritability, poor relationships with others at a score of 1 (mild)). Disability evaluation for TBI Residuals correlates to the highest score of the ten possible TBI Residual Facets, which for Petitioner is "1" which corresponds to a 10% disability evaluation.

k. Based on the foregoing analysis, the AO recommended as follows:

Should 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 (20 March 2015):

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

1. Post Traumatic Stress Disorder, VA Code 9411, rated at 50%, permanent and unstable, combat related (CR), combat zone (CZ)

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2. Residuals of TBI, VA Code 8045, rated at 30%, permanent and stable, combat related (CR), combat zone (CZ)

This results in a combined rating of 55%.

## CONCLUSION

Upon review and consideration of the new and material evidence of record, the Board concluded that there was an injustice in Petitioner's naval record that warrants relief. The Board substantially concurred with the findings of the AO, observing that, had Petitioner been reviewed by the FPEB during his service, he would have been found unfit as described within the AO. The Board determined that the basis and rationale for Petitioner's administrative discharge are not clear, particularly in light of the fact that his available OMPF documents reflect that he requested an administrative board yet there is no indication that one was held. Thereafter, he received a General (Under Honorable Conditions) characterization of service due to completion of his required service. Thus, while misconduct-based discharges generally take precedence over disability processing, in this case, even without regard to subsequent action of this Board or the NDRB, there did not appear to be a misconduct-based reason to deprive Petitioner of being reviewed by the PEB while he was in service. Further, there is ample evidence that Petitioner had manifested unfitting conditions of PTSD and TBI while in service, for example as described by his Regimental Surgeon.

Thus, the Board recommended adoption of the proposed finding and rating by the AO, rounded to 60%, as described more fully below.

## RECOMMENDATION

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

Petitioner shall be placed on the Permanent Disability Retired List (PDRL) as unfit for the following conditions effective the date of his discharge (2 March 2015):

1. Post Traumatic Stress Disorder, VA Code 9411, rated at 50%, permanent and unstable, combat related (CR), combat zone (CZ)
2. Residuals of TBI, VA Code 8045, rated at 30%, permanent and stable, combat related (CR), combat zone (CZ)

With a combined rating of 60%.

The DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's placement on the PDRL and any lawful monies owed.

The Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) with changes as follows: narrative reason for separation: Disability, Permanent CR CZ; separation program designator: as appropriate; reentry code: RE-3P.

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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 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.

5/7/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]