



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

█  
Docket No. 4084-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,  
█

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

Encl: (1) DD Form 149  
(2) Advisory Opinion by M.D., Physician Advisor, 15 May 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 medical retirement.

2. The Board, consisting of █, and █ reviewed Petitioner's allegations of error and injustice on 23 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.

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. On 2 November 2015, Petitioner completed an enlistment physical examination, in which he was deemed physically qualified for enlistment. Petitioner subsequently enlisted and began active duty service in the Navy on 17 March 2016. In July 2020, Petitioner was diagnosed with hypertrophic cardiomyopathy (HCM). On 9 October 2020, Petitioner had an Automatic Implantable Cardioverter Defibrillator (AICD) surgically implanted. On 29 December 2020, Petitioner was referred to the Disability Evaluation System. Due to a COVID backlog, a medical evaluation board (MEB) finally referred to the Physical Evaluation Board (PEB) for HCM on 27 May 2021.

c. On 24 February 2021, the Department of Veterans Affairs (VA) released their proposed ratings which included AICD (VA Diagnostic Code 7020-7011) at 100% and Hypertension (VA Diagnostic Code 7101) at 10% for a proposed service-connected combined evaluation of 100%. On 13 January 2022, the informal PEB found Petitioner to be Unfit for continued service and recommended Separation without benefits from active duty for the unfitting condition of Other HCM, which was determined to be a preexisting condition rendering the condition EPTS-NSA (Existed Prior to

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Service-Not Service Aggravated). The Presiding Officer stated: “Member had a congenital disorder which his mother also has clear and unmistakable evidence demonstrates that the disability existed before the [service member’s] entrance on active duty and was not aggravated by their current period of military service (beyond that determined to be due to natural progression) (DoDI 1332.18).”

d. On 21 January 2022, Petitioner did not accept the informal PEB findings and requested a Formal PEB (FPEB). Petitioner contended his HCM was Service-Aggravated and not a manifestation of the condition’s “natural progression.” Petitioner refuted the finding of “Not Service Aggravated,” citing sixteen articles or studies in support of his contention that his manifestation of HCM at a Stage 3 Level (which only 15% of HCM patients progress to), lack of manifestation of HCM in two of his elder siblings and his mother’s diagnosis at age 57 on a proactive evaluation (but without symptoms her entire life), and manifestation of clinical symptoms were a result of required level of physical training/exercise and exposure to particulate matter, not a result of the natural progression of his HCM.

e. On 28 April 2022, the FPEB found Petitioner’s condition EPTS-NSA. On 19 May 22 Petitioner did not accept the FPEB findings and requested a Petition for Relief (PFR) appellate review from Director, Secretary of the Navy Council of Review Boards (SECNAVCORB) to contest his fitness determination. On 14 June 2022, SECNAVCORB denied the PFR finding the decision of the PEB was valid and supported by the preponderance of evidence. On 28 September 2022, Petitioner was discharged with an honorable characterization of service. His Certificate of Release or Discharge from Active Duty (DD Form 214) states “Disability, Existed Prior To Service, PEB” as the narrative reason for separation.

f. For this petition, Petitioner requests to upgrade his discharge from EPTS-NSA to placement on the Permanent Disability Retired List (PDRL). In his application, Petitioner contends the PEB did not meet the “clear and unmistakable” evidence burden to show his condition pre-existed service, and if so, was not aggravated by service. Petitioner based this on three issues: 1) the PEB failed to satisfy the “clear and unmistakable” evidentiary burden and the President of the PEB inaccurately stated the “entitlement to benefits does not use the same standards as the VA.” The Petitioner argues this statement contravenes the 2009 National Defense Authorization Act which intended the Department of Defense (DoD) to utilize the same presumption standards as the VA; 2) the PEB was “arbitrary and capricious” in their decision “misrepresenting” two studies in establishing the clear and unmistakable evidence burden that Petitioner’s condition was EPTS-NSA; 3) that he did not receive a “full and fair hearing” due to the “blatant mischaracterization of each studies result.”

g. In order to assist the Board in reviewing this petition, the Board requested, and received the enclosure (2) advisory opinion prepared by a qualified medical professional. According to the AO, which was considered favorable to the Petitioner:

“Regarding the finding of EPTS, Petitioner was diagnosed as having a genetic mutation, the MYBPC3 gene, indicating a genetic predisposition to the possible development of HCM. Not all individuals with the MYBPC3 gene will develop HCM, and those that do develop HCM will exhibit varied levels of clinical symptoms. HCM is linked to this genetic gene mutation. Petitioner does have a genetic variant predisposing him to developing HCM and did in fact develop clinically significant HCM. As the genetic variant was present at birth, his

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underlying condition predated his military service and was appropriately determined to be EPTS.”

“Regarding the PEB determination of Not Service Aggravated, Petitioner presented valid scientific studies and clinical evidence in support of his contention his HCM developed and progressed due to environmental exposure (e.g., fine particulate matter, air pollution), hypertension, and high levels of exercise and was not due to “natural progression” of the condition...”

“Petitioner cited several peer-reviewed scientific studies that supported his contention that linked environmental exposures, hypertension, and exercise (at the level to maintain high physical standards in the military) to the development and progression of his HCM. He stated though his mother and two older brothers also had the MYBPC3 genetic mutation, they never developed clinical symptoms from this, much less diagnosable HCM. Though most people with the MYBPC3 genetic mutation do not go on to develop significant clinical symptoms, Petitioner’s HCM condition is classified as Stage 3, a category to which only 15% of HCM patients progress. His age when his HCM presented is much younger than most subjects in several of the clinical studies cited with findings that “athletic HCM patients were distinctly younger,” and that “higher physical activity volumes were related to a younger age at diagnosis, which could indicate that physical activity produced symptoms that prompted the diagnosis or that physical activity accelerated disease progression.”

h. The AO concluded the preponderance of evidence supports the PEB determination that Petitioner’s unfitting condition EPTS. However, the preponderance of evidence as contained in the records of the PEB decision and Petitioner’s submitted evidence in his application to the Board, does support Petitioner’s contention his unfitting condition was service aggravated and not due to the natural progression of his condition. 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 (28 September 2022):

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

1. Implanted Automatic Implantable Cardioverter Defibrillator (AICD) (due to Hypertrophic Cardiomyopathy), VA Code 7020-7011, rated at 100%, 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 error and injustice warranting relief. Specifically, the Board determined that although Petitioner’s medical condition EPTS, there was valid scientific and clinical evidence that his HCM was service aggravated.

## RECOMMENDATION

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

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Petitioner be found Unfit and placed on the Permanent Disability Retired List at a combined rating of 100%, effective the date of his discharge on 28 September 2022, for the following condition:

1. Implanted Automatic Implantable Cardioverter Defibrillator (AICD) (due to Hypertrophic Cardiomyopathy), VA Code 7020-7011, rated at 100%, permanent and stable, not combat related (NCR), not-combat zone (NCZ).

Change Petitioner's narrative reason for separation and associated separation code to transfer to the PDRL. Note: Navy Personnel Command 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.

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.

6/26/2024

