



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

[REDACTED]
Docket No. 5134-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USMC

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

Encl: (1) DD Form 149
(2) Advisory Opinion of 30 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 permanent medical retirement.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 June 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 enclosure (2), an advisory opinion (AO) furnished by a qualified medical professional. The AO was considered favorable toward Petitioner's case.

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. Petitioner entered active duty in the United States Marine Corps on 19 June 2002. From 27 March 2008 to 30 August 2008, Petitioner deployed in support of Operation Iraqi Freedom (OIF). On 10 January 2010, he deployed in support of [REDACTED] aboard the [REDACTED]. On 14 April 2010, Petitioner received a formal counseling for lack of judgment. He received another formal counseling on 23 September 2011 for substandard performance of duty and poor judgment. He underwent his third deployment to [REDACTED] with [REDACTED], [REDACTED] from 17 August 2013 to 7 December 2013. Upon return from

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that deployment, Petitioner was the subject of a command investigation for allegations of sexual harassment, violation of standing alcohol consumption regulations, and creating a hostile work environment during the deployment. The investigation found substantial evidence of the alleged offenses. Petitioner entered into a pre-trial agreement and pleaded guilty at non-judicial punishment (NJP) on 26 June 2014 for Failure to Obey order or regulation. Due to the NJP, Petitioner received a third formal counseling on 26 June 2014 and an adverse fitness report covering the period 8 April 2014 to 8 July 2014.

c. Due to complaints of hearing loss, memory issues, and attention problems, Petitioner began seeking treatment and was grounded indefinitely by the [REDACTED] [REDACTED] ([REDACTED]) [REDACTED]. Petitioner subsequently underwent neuropsychological testing at the Traumatic Brain Institute (TBI) Clinic Naval Hospital [REDACTED] [REDACTED] on 16 January 2015. Petitioner reported multiple incidents of striking his head against the airframe of the [REDACTED] and was diagnosed with Depressive Disorder. On 24 March 2015, a Medical Evaluation Board referred Petitioner's case to the Physical Evaluation Board (PEB) for conditions of Major Depressive Disorder (Recurrent, Unspecified Degree), PTSD, and Concussion with no Loss of Consciousness.

d. Commanding Officer (CO) of [REDACTED] wrote a non-medical assessment, dated 14 April 2015, stating Petitioner was working outside of his MOS of [REDACTED] Crew Chief due to his medical condition (ASM Fleet Administrator), but that Petitioner could perform in his rating. The CO also noted Petitioner was not considered worldwide assignable (due to medical requirements), did not desire to continue military service ("aware of his disability and does not want to endanger other Marines or himself with his inability to fully perform his duties"), and was not recommended for Permanent Limited Duty if found unfit. The CO noted Petitioner stated he had multiple concussive blows to the head during combat evasive maneuvers and that records and squadron leadership did not corroborate these claims and they were considered "highly suspect."

e. On 11 June 2015, the MEB mental health examiner diagnosed Petitioner with post-traumatic stress disorder (PTSD) and wrote a MEB Addendum regarding the diagnoses of TBI, Headache Disorder, and Hearing Loss. On 18 November 2015, the Informal PEB (IPEB) found Petitioner FIT to continue on active duty with both the line officers commented that the NMA raised "doubts to validity" of Petitioner's claims. On 30 November 2015, the Petitioner requested a Formal PEB hearing to contest the finding of FIT to continue on active duty by the IPEB. Petitioner contended he was unable to carry out his duties due to his conditions of Chronic PTSD, Major Depression, Vertigo, and Chronic Headaches. Petitioner included new evidence in his request for Formal PEB Hearing to include: letters from fellow Marines attesting to a 2007 [REDACTED] incident of shrapnel hitting Petitioner; documentation Petitioner had been prescribed a Service Animal (canine) to accommodate his needs, a memorandum from a clinical psychologist recommending Petitioner for a six-week voluntary Intensive Outpatient Dual Diagnosis Program, a memorandum from the MEB Psychologist who reiterated the opinion that Petitioner was not fit for full duty, a 25 November 2015 TBI Clinic addendum recommending the PEB find the member Unfit, and a 27 November 2015 memorandum from the Department Heard of SARP (Substance Abuse and Rehabilitation) which confirmed the diagnoses of PTSD (GWOT-Related), Major Depression (Single Episode, Moderate), and Alcohol Dependence.

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f. On 4 January 2016, the Director of the Secretary of the Navy Council of Review Boards denied Petitioner's request for a Formal PEB to contest the IPEB determination of FIT for continued service. Petitioner was subsequently discharged on 21 April 2016 with an Honorable characterization of service. On 13 June 2016, the Department of Veterans Affairs (VA) rated Petitioner for multiple conditions to include PTSD /TBI/Central Vestibular Dysfunction with a disability evaluation of 70%, Migraine Headaches at 50% disability evaluation, and Tinnitus at 10% disability evaluation.

g. 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 incurred medical and mental health conditions that prevented him from adequately performing the duties of his office, grade, rank, MOS, or rating. The AO concluded Petitioner's medical status represented an obvious medical risk to the health of the Petitioner and to the health or safety of other members. 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 (21 April 2016):

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

1. Post Traumatic Stress Disorder (with Major Depressive Disorder and Alcohol Use Disorder), VA Code 9411, rated at 50%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)
2. Traumatic Brain Injury (Residuals of TBI), VA Code 8045, rated at 10%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)

h. In making its recommendation for the disability ratings, the AO stated in pertinent part:

Review of clinical records of Petitioner's diagnosis of PTSD/Major Depressive Disorder indicates a range of occupational and social impairments most closely approximating the VA assessment of impairment of "Occupational and Social Impairment with Reduced Reliability and Productivity" which corresponds to a disability rating of 50%. Review of clinical records of Petitioner's diagnosis of TBI/Residuals of TBI shows impairments in the following facets of impairment of Memory/Attention/Concentration/Executive Function; Judgment; Social Interaction; Subjective Symptoms; and Neurobehavioral Effects. None of the symptoms/impairments documented in the clinical record were considered higher than "mild" which most closely corresponded to the VA Disability Rating for Residuals of TBI at a 10% evaluation.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting 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 Post Traumatic Stress Disorder and had TBI residual impairments that

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rendered him unfit for service. In making this finding, the Board also concurred with the AO's disability percentage recommendations and noted that the AO's recommendations were based on a comprehensive review of Petitioner's record and rationally determined in accordance with applicable VA rating criteria.

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 60%, effective the date of his discharge on 21 April 2016, for the following conditions:

1. Post Traumatic Stress Disorder (with Major Depressive Disorder and Alcohol Use Disorder), (Stable) VA Diagnostic Code 9411, rated at 50%, not combat related (NCR), non-combat zone (NCZ)
2. TBI (Residuals of TBI), VA Code 8045, rated at 10%, permanent and stable, not combat related (NCR), non-combat zone (NCZ)

Change Petitioner's narrative reason for separation, separation authority, and associated separation and reentry codes to reflect his 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.

Note: 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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

7/1/2024

