



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

[REDACTED]  
Docket No. 5473-23  
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] XXX XX [REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) Official Military Personnel Folder (OMPF)  
(c) USD Memo of 25 Aug 17 (Kurta Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Physician Advisor, Board for Correction of Naval Records, ltr dtd 24 May 2024  
(3) [REDACTED], ltr dtd 28 June 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), requesting that he receive a service medical disability retirement at the level of 90% or, in the alternative, referral into the Disability Evaluation System (DES).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 11 July 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 naval records, and applicable statutes, regulations, and policies to include reference (c). The Board also considered enclosure (2), an advisory opinion (AO) from a qualified medical professional, and enclosure (3), Petitioner's response to the AO.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. A review of Petitioner's Official Military Personnel Folder (OMPF) reveals that he served an active duty enlistment with the Army from 5 September 2000 to 4 September 2004. Thereafter, Petitioner enlisted in the Marine Corps and commenced a period of active duty on 23 May 2005. During Petitioner's Marine Corps service, he was reviewed by several medical professionals, which is described in more detail in the AO. Notably, Petitioner was in an

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aviation Military Operational Specialty (MOS) when a flight surgeon evaluated him for a flight physical on 10 April 2014, which the AO described as follows:

The Flight Surgeon concluded that Petitioner was Not Physically Qualified (NPQ), Not Aeronautically Adapted (NAA) for Duties Involving Flying (DIF), waiver was not recommended, and this Grounding PE was entered into the record. Examiner noted Petitioner was considering getting out of the military with upcoming EAS. Examiner ordered a 12-lead ECG with interpretation and report, Visual Acuity Screening Test, and referred Petitioner to Network for psychiatry consult.

The Flight Surgeon assessed him with “Involuntary Shaking or Trembling Movements (tremor) stating this Benign Essential Tremor was seen by neurology in 2011 and treated with Inderal with side effects and was currently [not] on meds and does not desire treatment. The tremor does affect his ability to eat/groom and hold weapon. NPQ waiver not recommended at this time.

He was also diagnosed with Hyperlipidemia (HLD) and educated on risks of untreated HLD. Petitioner declined medication and was recommended for additional laboratory studies. He was also diagnosed with Adjustment Disorder with Anxious Mood, which Petitioner stated he had been “unaware” of diagnosis. Examiner stated that “Currently NPQ waiver was not recommended.”

Petitioner was returned to duty with unspecified Work/Duty Limitations.

c. As further described in the AO, on 21 April 2014, Petitioner underwent a separation physical examination at [REDACTED]. The examiner noted that the following day Petitioner would be starting a final physical examination with the Department Veterans Affairs (VA) and that he will “have them address all issues.” The examiner referred to Petitioner’s report of medical assessment and report of medical history forms (DD 2807-1 and DD-2697, respectively) and explained that all conditions or symptoms noted would be addressed by the VA.

d. Petitioner was separated on 9 November 2014 due to the completion of his required service and assigned an RE-1A reentry code. According to Petitioner’s statement, he had a pending job offer to work, post-service, as a civilian air traffic controller for the Marine Corps. His job offer was withdrawn, however, after a pre-employment physical found him to not be physically qualified to work as an air traffic controller.

e. In his petition, Petitioner requests to be granted a service disability retirement at a 90% rating or, in the alternative, to be placed into the Disability Evaluation System (DES). In support of his request, he contends that Petitioner had medical conditions that were incurred or aggravated during his period of enlistment that called into question his ability to perform the duties of his MOS. In further support, he asserts he was classified as Not Physically Qualified and a waiver was not recommended, and that, as such, he should have been referred to a Medical Evaluation Board.

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f. In order to assist it in reviewing her petition, the Board obtained the AO, which was considered favorable in part to Petitioner's request. The AO stated in pertinent part:

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, had Petitioner been referred to the PEB for his diagnoses of Familial (Benign Essential) Tremor and Anxiety Disorder, NOS, the likely result would have been the following:

Regarding the condition of Familial (Benign Essential) Tremor, given the examining Neurology specialist found that he was fit for full duty and returned him to same without limitations; primary care and aviation medicine providers evaluated and treated him for his tremors condition and consistently returned him to duty without limitations; Petitioner's performance evaluations evidenced a consistent pattern of superior sustained performance throughout his evaluation and treatment for this condition; and the VA Ratings Decision granted service-connection for his tremors condition but assessed his occupational and social impairment at a 0% disability evaluation; it is likely the PEB would have deemed this condition a Category III condition (not separately unfitting and did not contribute to the unfitting condition).

Regarding the condition of Anxiety Disorder, NOS, given the increasing and consistent pattern of anxiety symptoms (to include somatic presentations such as chest pain and difficulty breathing with negative medical evaluations for each) found in Petitioner's service records and personal statements evaluated in-service as Adjustment Disorder with anxious mood and Anxiety Disorder, NOS; VA Disability Rating contemporary to military service for service- connected diagnosis of Generalized Anxiety Disorder with Insomnia Disorder at a 50% disability evaluation reflecting "occupational and social impairment with reduced reliability and productivity"; and the likelihood Petitioner's diagnoses of Adjustment Disorder with anxious mood and Anxiety Disorder, NOS represented the earliest manifestations of a worsening anxiety condition that was subsequently diagnosed as Generalized Anxiety Disorder; it is considered possible the PEB would have deemed his in-service diagnosed condition of Anxiety Disorder, NOS as unfitting for continued service at a disability rating commensurate with a level of occupational and social impairment of "occupational and social impairment with reduced reliability and productivity" best approximating a disability evaluation of 50%.

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 (09 November 2014):

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

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1. Unspecified Anxiety Disorder with Insomnia, VA Code 9413, rated at 50%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

This results in a combined rating of 50%.

g. The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been referred to the IDES for adjudication of unfitness for duty."

h. In response to the AO, Petitioner quoted several paragraphs from the AO and pointed out that the AO was favorable.

## CONCLUSION

Upon review and consideration of the evidence of record, the Board concluded that there was an error in Petitioner's naval record that warrants partial relief. Specifically, the Board found that Petitioner should have been evaluated within the DES while he was in service and such an evaluation would have resulted in a finding of a 50% disability retirement rating. In reaching its decision, the Board substantially concurred with the findings of the AO that sufficient evidence exists to support Petitioner's request to be medically retired from the Marine Corps as a result of an unfitting condition incurred while he was on active duty. Further, the Board agreed that Petitioner's level of occupational and social impairment was commensurate with "occupational and social impairment with reduced reliability and productivity," best approximating a disability evaluation of 50%.

The Board observed that the un rebutted findings of the AO appeared to be rational and based upon available medical documentation. Among other supporting facts, including those set forth in the AO, the Board found it significant that Petitioner was found to be medically unqualified to serve in an air traffic control position for the Marine Corps immediately after he was discharged upon the completion of his required active service.

## RECOMMENDATION

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

That Petitioner be placed on the Permanent Disability Retired List (PDRL) effective 9 November 2014 for the following conditions:

1. Unspecified Anxiety Disorder with Insomnia, VA Code 9413, rated at 50%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

This results in a combined rating of 50%.

Petitioner's narrative reason for separation shall be changed to: Disability, Permanent; separation program designator: as appropriate; reentry code: RE-3P.

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Note: Headquarters Marine Corps will issue a new DD Form 214 for the period ending 9 November 2014.

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.

7/29/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]