



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

█
Docket No. 9200-23
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 █

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

Encl: (1) DD Form 149 w/attachments
(2) Office of the Judge Advocate General ltr 1850 Ser 13/3DC0624.17 of 1 Aug 18

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 his disability severance be categorized as combat related, that his separation pay be changed in conformance with a combat designation, and that his Certificate of Release or Discharge from Active Duty (DD Form 214) be conformed in all relevant categories to reflect combat related.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 25 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, together with all material submitted in support thereof, relevant portions of Petitioner's naval record, 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. 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) reveals that Petitioner enlisted in the Navy and commenced a period of active duty on 27 January 2016. On 28 April 2017, Petitioner was discharged pursuant to the finding of an Informal Physical Evaluation Board (IPEB) due to Disability, Severance Pay, Non-Combat (IDES).

c. On 1 August 2018, in response to a letter from Petitioner, the Office of the Judge Advocate General wrote the letter at enclosure (2), which found that Petitioner's unfitting condition was combat-related, explaining as follows:

This responds to your letter of April 11, 2017, in which you appealed the Physical Evaluation Board's finding that your category I condition of spondylosis (unstable) was not a combat-related injury for the purpose of 26 U.S.C. § 104(b)(3), which provides that in order for an injury or illness to be combat-related, it must be caused by an instrumentality of war or incurred as a direct result of armed conflict, while engaged in extra-hazardous service, or under conditions simulating war. Upon careful review, I am granting your appeal.

The record establishes by a preponderance of the evidence that you incurred your category I condition of spondylosis (unstable) while performing the obstacle course at BUD/S training, and that the BUD/S obstacle course simulates combat conditions. Accordingly, I have determined that your injury is combat-related under 26 U.S.C. § 104(b)(3).

d. In support of his requested relief, Petitioner contends that he appealed the non-combat finding of his disability and that Code 13 found in his favor.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that there was an error in Petitioner's naval record. Specifically, the Board substantially concurred with the enclosure (2) findings of Office of the Judge Advocate General that Petitioner's disability was considered combat-related within the meaning of 26 U.S.C. § 104(b)(3). Thus, the Board recommended the relief set forth below.

RECOMMENDATION

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

Petitioner's naval record be corrected by issuing him a new Certificate of Release or Discharge from Active Duty (DD Form 214) or DD Form 215, whichever is deemed appropriate, with changes as follows: narrative reason for separation: Disability, Severance Pay, Combat (IDES); separation program designator: as appropriate.

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

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

5/16/2024

[REDACTED]