



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

[REDACTED]
Docket No. 385-24
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) Official Military Personnel File
(c) BCNR Docket No. 4985-20

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion, dtd 6 Sep 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 the Board correct her record to reflect an increase in her service disability rating from 60% to 75%.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 September 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, to include all references. The Board also considered the enclosure (2), an advisory opinion (AO) from a qualified medical professional that was considered favorable toward Petitioner.

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. A review of Petitioner's reference (b) Official Military Personnel File (OMPF) reveals that Petitioner accepted a commission in the Navy on 23 May 2008 after having graduated from the U.S. Naval Academy. On 22 June 2017, a medical evaluation board (MEB) diagnosed Petitioner with Lichen Planopilaris, Lumbar Spondylolysis, Shoulder pain, and Thoracic Spine pain and referred her to the Physical Evaluation Board (PEB). On 29 November 2017, the Department of Veterans Affairs (VA), within its role in the Integrated Disability Evaluation System (IDES) proposed rating for Lichen Planopilaris (30%) and Lumbar Spine Degenerative Disc Disease (10%).

c. On 20 December 2017, the PEB adopted the proposed VA ratings for a combined 40% rating and recommended Petitioner be transferred to the Permanent Disability Retired List (PDRL). On 23 January 2018, Petitioner accepted the PEB findings and waived her right to a formal hearing or reconsideration by the VA. Thus, in accordance with the findings of the PEB, on 27 April 2018, Petitioner was transferred to the PDRL.

d. On 23 January 2019, the VA increased Petitioner's disability rating for Lichen Planopilaris to 60%, effective 28 April 2018. The decision was based on additional service medical treatment records that were not available to the VA prior to the decision that it made within the IDES. In 2020, Petitioner filed a petition, reference (c), seeking to have her 40% service disability retirement rating increased relating to her Lichen Pilopilaris condition. In connection with evaluating this prior application by Petitioner, the Board obtained an AO from the Council of Review Boards (CORB), which was considered favorable to Petitioner and found that the PEB relied on an erroneous decision by the VA in reaching its decision. On 16 January 2021, this Board directed that Petitioner's service disability rating for Lichen Planopilaris condition be increased from 30% to 60% effective from the date of her transfer to the PDRL and thus her combined PEB rating was increased from 40% to 60% effective the date of her transfer to the PDRL.

e. In her current petition, the Petitioner seeks to have her service disability rating increased from 60% to 75%. In support of her request, Petitioner asserted that her secondary disabling conditions of Right and Left Lower Extremity Sciatic Nerve Radiculopathy were the main reason she was unfit and they should have been included in her combined disability rating as separate unfitting conditions.

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

Though her primary unfitting condition remained Spondylolysis, Lumbar Region with accompanying impairment related to pain and decreased Range of Motion to the spine, the radiculopathy symptoms are not separately unfitting but contribute to the primary condition with symptoms and impairments separate and unique from the Spondylolysis condition. In the NARSUM Addendum from the Pain Management Specialist, the radiculopathy symptoms separately contribute to the occupational impairment of being unable to 'sit for even short periods of time' and immobility of her low back 'which the member is unable to perform due to pain.' Petitioner's contention of unfitness due to bilateral radiculopathy was further supported by the August 2021 VA Disability Rating Decision that granted service-connection for Right and Left Lower Extremity Sciatic Nerve Radiculopathy (as secondary to the service-connected disability of lumbar spine degenerative disc disease with arthritis) with evaluation of 20% disability rating separately.

As Petitioner's bilateral Sciatic Nerve Radiculopathy arose from the same pathophysiologic processes as her Spondylolysis, Lumbar Region associated with her military duties, including piloting a helicopter, which resulted in a PEB

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

determination the unfitting condition was Combat Related (Instrument of War), but Non-Combat Zone, the same consideration would apply to the secondary conditions of Right and Left Lower Extremity Sciatic Nerve Radiculopathy.

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 her discharge she was unfit for continued military service for additional conditions of bilateral Sciatic Nerve Radiculopathy.” The AO further opined, 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 (27 April 2018)”:

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

1. Lichen Planopilaris Which is a Scarring Alopecia (Stable), VA Code 7800-7822, rated at 60%, permanent and stable, not combat related (NCR), non-combat zone (NCZ);
2. Left Lower Extremity Sciatic Nerve Radiculopathy as Secondary to Service-Connected Disability of Lumbar Spine Degenerative Disc Disease with Arthritis, VA Code 8520, rated at 20%, permanent and stable, combat related (CR-IOW), noncombat zone (NCZ);
3. Right Lower Extremity Sciatic Nerve Radiculopathy as Secondary to Service-Connected Disability of Lumbar Spine Degenerative Disc Disease with Arthritis, VA Code 8520, rated at 20%, permanent and stable, combat related (CR-IOW), non-combat zone (NCZ);
4. Spondylolysis, Lumbar Region, VA Code 5242-5243, rated at 10%, permanent and stable, combat related (CR-IOW), non-combat zone (NCZ).

This results in a combined rating of 80%

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 findings of the AO, which the Board determined was reasonable based on specialized medical knowledge and substantial facts. Accordingly, based on those findings, the Board recommended the relief as set forth in the following recommendation.

RECOMMENDATION

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

That Petitioner’s naval record be corrected to reflect she was found unfit and placed on the PDRL, effective 27 April 2018, for the following conditions:

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

1. Lichen Planopilaris Which is a Scarring Alopecia (Stable), VA Code 7800-7822, rated at 60%, permanent and stable, not combat related (NCR), non-combat zone (NCZ);

2. Left Lower Extremity Sciatic Nerve Radiculopathy as Secondary to Service-Connected Disability of Lumbar Spine Degenerative Disc Disease with Arthritis, VA Code 8520, rated at 20%, permanent and stable, combat related (CR-IOW), non-combat zone (NCZ);

3. Right Lower Extremity Sciatic Nerve Radiculopathy as Secondary to Service-Connected Disability of Lumbar Spine Degenerative Disc Disease with Arthritis, VA Code 8520, rated at 20%, permanent and stable, combat related (CR-IOW), noncombat zone (NCZ);

4. Spondylolysis, Lumbar Region, VA Code 5242-5243, rated at 10%, permanent and stable, combat related (CR-IOW), non-combat zone (NCZ).

This results in a combined rating of 80%.

If required, the Defense Finance and Accounting Service will audit the Petitioner's pay account to determine amounts due, if any.

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.

10/21/2024

