



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

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Docket No. 1623-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USNR,  
RET, XXX-XX-█

Ref: (a) Title 10 U.S.C. § 1552  
(b) Naval Record  
(c) ASN (M&RA) memo, 16 Nov 21  
(d) COMNAVPERSCOM msg 222126Z JUN 17  
(e) LOD-B for █  
(f) SECNAVINST 1850.4 (series)  
(g) SECNAVINST 5420.193, 19 Nov 97

Encl: (1) DD Form 149 w/attachments  
(2) CNPC (PERS 95) ltr 5400 Ser 95/243, 9 Apr 24  
(3) Petitioner ltr, 5 May 2024

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 he be awarded a medical disability retirement at 100% and that he receive a designation of combat relatedness for several physical conditions.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 22 August 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. The Board also considered the enclosure (2) advisory opinion (AO) from Commander, Navy Personnel Command (PERS 95) as well as Petitioner's enclosure (3) 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'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 naval record reveals that he enlisted in the Navy and commenced a period of active duty on 27 August 2001. During his service, he served as a Navy Special

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Warfare Operator. On 10 August 2013, he separated from service at the expiration of his enlistment and was issued a RE-R1 (eligible for reenlistment) reentry code. Thereafter, Petitioner affiliated with the Navy Reserve. By letter dated 11 August 2014, the Department of Veterans Affairs (VA) informed Petitioner that he was found to have several service-connected disabilities totaling 100% and assigned the effective date of the disabilities retroactive to the day after he left active duty.

c. While Petitioner was in the Navy Reserve, he was placed into Medical Readiness Review (MRR). A 22 June 2017 message from Commander, Navy Personnel Command to Petitioner's Navy Operational Support Center (NOSC) states that, based on medical information provided, Petitioner was found to be not physically qualified (NPQ) for retention in the Navy Reserve.<sup>1</sup> Subsequently, on 6 July 2017, Petitioner was provided an Administrative Remarks (Page 13) form that explained to him that he was found NPQ and that he had an option of either (1) be discharged by reason of being NPQ, (2) transfer to the Retired Reserve (if eligible), and (3) a review by the Physical Evaluation Board on the basis of available medical records. Petitioner initialed next to his choice to transfer to the Retired Reserve. On 1 August 2017, Petitioner was transferred to the Retired Reserve.

d. In his petition, Petitioner requests (1) to be awarded a medical disability retirement with a 100% rating, and (2) that the Board determine that several of his conditions were combat related. In support of his request, Petitioner argues that he incurred medical conditions while he was on active duty and that he was "discharged in error" and should have instead been placed into the Disability Evaluation System (DES). He further asserts that because the medical conditions for which he was ultimately separated from service were incurred during his active duty service, his conditions are presumed to have been incurred in the line of duty.

e. In order to assist the Board in reaching a decision it requested the enclosure (2), the AO. The AO explained the nature of the MRR process; explaining that, without a finding that the reserve service member's medical condition was incurred in the line of duty, the Physical Evaluation Board (PEB) is constrained only to concur or nonconcur with the findings of the Bureau of Medicine and Surgery (BUMED). That is, it determines only if the service member is physically qualified or not physically qualified to continue naval service. The AO explained that at the time of Petitioner's MRR adjudication, "there was no path for a Reservist to go to the PEB for injuries that occurred while in the Active Component." The AO further explained that the provisions of reference (c) were implemented effective 16 November 2021, and those provisions allow for reserve service members to apply by way of submitting an LOD-B for DES benefits request to PERS-95 for an adjudication of their conditions. In view of the foregoing, the AO opined, with respect to Petitioner's conditions, as follows, "had the LOD-B for DES program been in effect in 2017, the following conditions would have been eligible for consideration: a. Bilateral shoulder pain, b. Bilateral knee pain, c. MDD [Major Depressive Disorder], d. PTSD [Post Traumatic Stress Disorder], e. Back pain, f. Cervicalgia." (edited for formatting). Based on the foregoing, the AO opined as follows:

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<sup>1</sup> The complete MRR package was not included in Petitioner's naval record or available to the Board.

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In the PERS-95 Senior Medical Officer's opinion, with respect to the conditions listed [above] and based on the medical documentation presented, [Petitioner] would have been recommended for LOD-B for DES for PTSD and MDD, and not recommended for bilateral shoulder pain, bilateral knee pain, back pain, and cervicgia as follows:

a. PTSD and MDD would be recommended because [Petitioner] was diagnosed 31 March 2014 as a result of events which accrued while serving in the active component from 1 August 2001 through 10 August 2013. Reported cause of the PTSD and MOD was the death of his first wife in 2013. Additionally, despite receiving treatment for PTSD from 2014 through 2016, he was still found not physically qualified - retention not recommend by BUMED, [reference (d)].

b. Bilateral shoulder pain, bilateral knee pain, back pain, and cervicgia would not be recommended because the medical documentation provided in [enclosure (1)] does not support the conditions having incurred while serving the Active Component nor having incurred or been aggravated during a period of qualified service in the reserve component.

f. The AO further explained the scope of the potential review as follows:

In the event PERS-95 was directed to approve LOD-B for DES benefits, in care of [Petitioner], the PEB would be directed to adjudicate his case, based on the medical evidence present as the time of his MRR (June 2017) for possible placement on the Permanent Disability Retirement List effective the date he was previously retired per enclosure (15) of (enclosure (1)). Additionally, the PEB would make the determination if any approved conditions rated a finding of combat relatedness for potential Combat Related Special Compensation (CRSC). Military retirees who receive VA pay benefits and think they are eligible for CRSC must apply to their branch of service via a form DD Form 2860. Additional information is available via Defense Finance and Accounting Service (DFAS) at <https://www.dfas.mil/RetiredMilitary/disability/Apply-for-CRSC/>

g. The AO ultimately recommended against referral of Petitioner to the PEB, explaining that, "PERS-95 recommends no referral to the PEB for LOD-B for DES in this case based on the fact that the MRR was conducted in 2017 prior to the LOD-B for DES program being created" and that at "the time of [Petitioner's] injury and MRR adjudication, there was no path for a Reservist to go to the PEB for injuries that occurred while in the Active Component."

h. Petitioner received a copy of the AO and provided the enclosure (3), his response to the AO. In his response, Petitioner argued that his bilateral shoulder pain, knee pain, back pain, and cervicgia were incurred during his active duty service, which he argues is supported by his active duty medical records. He also argued that these conditions were aggravated during his reserve service. In addition, Petitioner argued that he should be granted relief based on today's standards and not the standards from 2017.

## CONCLUSION

In its review of the entirety of Petitioner's materials as described above, and pursuant to its governing policies and procedures, the Board found sufficient evidence of errors and/or injustices warranting corrective action. In its review of the AO, the Board concluded that Petitioner is entitled to relief in the form of approving him LOD-B for DES status. In reaching its decision, the Board determined that there was sufficient evidence that Petitioner incurred medical conditions during his service that were more likely than not incurred in the line of duty, and that Petitioner was ultimately unable to continue his service in the Navy Reserve due to medical conditions. Thus, the Board determined it is appropriate that Petitioner be referred to, and reviewed by, the PEB, as described within the AO. While the AO ultimately recommended against referring Petitioner to the PEB based on the timing of the implementation of references (c) and (e), the Board observed that the AO nevertheless provided a course of action for this Board should it determine that relief was appropriate. The Board concurred with the course of action set forth within the AO based on their determination an injustice exists with Petitioner's record.

However, the Board did not concur with Petitioner's contention that his unfitness was conclusively established for purposes of establishing his eligibility for "medical retirement and benefits" retroactively. The Board is cognizant of Petitioner's arguments to be placed directly on the Permanent Disability Retired List (PDRL). However, the Board's mandate is to provide full and fair relief upon the discovery of material errors or injustices in naval records<sup>2</sup>. The Board found that the specific relief requested by Petitioner may be full, but it would not be fair. Accordingly, the Board determined that referral to the DES for an actual disability evaluation to be the only way to effectively determine whether placement on the PDRL is warranted.

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<sup>2</sup> The Board is not empowered or qualified to make Line of Duty (LOD) determinations for purposes of determining eligibility for medical disability benefits. For members of the Reserve Component (RC) of the Navy, that function was assigned to the Chief of Naval Personnel (CNP) by the Secretary of the Navy (SECNAV) pursuant to reference (f). Therefore, for Petitioner to request the Board to determine whether he is entitled to a medical retirement is assuming the Board has a responsibility which it is not empowered or qualified to perform. That function is assigned to the Department of the Navy (DON) Physical Evaluation Board (PEB) by the SECNAV in reference (f). The statutory and regulatory function of this Board is to "consider applications properly before it for the purpose of determining the existence of error or injustice in the naval records of current and former members of the Navy and Marine Corps, to make recommendations to the Secretary or to take corrective action on the Secretary's behalf." See references (a) and (g). While the SECNAV, acting through this Board, is empowered to correct a naval record in any way deemed necessary consistent with the law to correct an error or injustice, to include directing the issuance of an LOD-B letter or making the corrections necessary to retroactively establish a former member's eligibility for medical disability benefits if necessary to correct an error or remove an injustice, this Board is neither authorized nor qualified to perform the functions assigned by the SECNAV to the CNP and DON PEB respectively. By identifying and/or correcting errors or injustices in a naval record, this Board may reach the same end result for an applicant as would otherwise have resulted from favorable determinations by CNP and/or the DON PEB, but it would arrive at that result through an entirely separate and distinct statutory and regulatory scheme which neither contemplates or authorizes LOD or fitness determinations.

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While the Board acknowledges that Petitioner was found to be unfit for continued Reserve service as a result of the MRR findings, this “fitness determination” was not based upon or informed by the same inputs as is required for a fitness determination purpose to the DES. Rather, the finding of unfitness in Petitioner’s case was essentially just a verification of BUMED’s purely medical recommendation for continued Reserve service, and fitness is not solely a medical question. Petitioner was under the mistaken belief that he could attain eligibility for medical disability benefits when he requested retirement on 6 July 2017, and he never objected to the NPQ finding. The Board also noted that Petitioner contends that he should be awarded a “medical disability retirement at 100%” based on the VA finding that he was found to be 100% disabled as of 2015. However, the Board concurred with the AOs finding and rationale that he would have been recommended for LOD-B for DES for PTSD and MDD, and not recommended for bilateral shoulder pain, bilateral knee pain, back pain, and cervicgia. As such, it is by no means certain that a PEB would have reached the same conclusion regarding Petitioner’s fitness.

Next, in the absence of any analysis of what conditions contributed to Petitioner’s unfitness, there is no way for this Board to calculate the appropriate disability rating. There was also no analysis regarding the stability of the conditions which should be so referred. To grant Petitioner medical disability benefits based upon a “fitness determination” made under these circumstances would be to provide Petitioner a windfall benefit which is afforded to no other Sailor. This would represent an injustice in itself. Accordingly, the Board believed that Petitioner’s unfitness has not been conclusively established for purposes of establishing his eligibility for medical disability benefits. For this reason, the Board found that the only fair way to resolve the errors/injustices identified above is to process Petitioner through the DES for an actual disability evaluation.

Finally, with respect to Petitioner’s request that certain of his conditions be considered combat related, the Board determined that form of relief was premature and that he needed to exhaust his remedies as described below. The Board notes that, as described in the AO, Navy retirees who receive VA pay and benefits and think they are eligible for CRSC must apply via a form DD Form 2860. Additional information is available via DFAS at <https://www.dfas.mil/RetiredMilitary/disability/Apply-for-CRSC/>

## RECOMMENDATION

In view of the above, the Board recommends the following corrective action be taken on Petitioner’s naval record:

That Petitioner’s record reflect that PERS-95 approved Petitioner for LOD-B for DES program for PTSD and MDD. As such, PERS-95 shall direct immediate referral to the PEB. The DES should conduct a disability evaluation of Petitioner as his conditions existed at the time of his MRR in 2017.

a. In the event that Petitioner is found unfit through the DES process at a rating of 30% or greater, all records pertaining to Petitioner’s MRR process and NPQ-RNR determination, as well as his Reserve Retirement shall be removed from Petitioner’s naval record. Petitioner’s naval record shall then be corrected as necessary to implement the outcome of the disability evaluation to be conducted pursuant to the immediate above paragraph. The usual DES course shall also

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determine whether any unfitting conditions rate a finding of combat relatedness or resulted from a combat zone (CR/CZ).

Note: If Petitioner is found to be unfit with a rating of 30% or greater through the DES process, and subsequently placed on the PDRL, his record will be corrected to change his Reserve Retirement to a disability retirement by way of placement on the PDRL effective the same date he was placed in the Retired Reserve. Further, his corrected naval records and this decision shall be forwarded to the DFAS to determine amounts due, if any.

b. In the event that Petitioner is found unfit through the DES process with a disability rating of less than 30%, then no changes shall be made to his naval record, and he will remain in the Retired Reserve.

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.

9/26/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]