



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

[REDACTED]
Docket No. 1940-24
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) USD Memo, 25 Aug 17 (Kurta Memo)
(c) PDUSD Memo, 4 Apr 24 (Vazirani Memo)
(d) Petitioner's Case File

Encl: (1) DD Form 149 w/attachments

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 placement either on the Permanent Disability Retired List (PDRL) or placement back on the Temporary Disability Retired List (TDRL) for further evaluation by the Physical Evaluation Board (PEB).

2. The Board, consisting of [REDACTED] 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 the naval records, and applicable statutes, regulations, and policies to include references (b) and (c).

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Petitioner entered active duty in the United States Navy on 19 March 2013. Petitioner injured his back, and an Magnetic Resonance Imaging demonstrated a large herniated disc. He underwent surgery but continued to suffer from persistent symptoms of back pain and radiculopathy. On 23 February 2020, the Informal PEB found Petitioner unfit for Chronic Back Pain and Left Side Lumbar Radiculopathy. Petitioner was placed on the TDRL effective 29 May 2020 at a 60% rating. On 12 September 2023, the PEB notified Navy Personnel Command (NPC) that Petitioner would be administratively removed from the TDRL due to not undergoing a periodic physical examination (PPE).

b. Petitioner argues that he never received any instruction—no orders or letters—to attend a PPE but did not think it was abnormal due to COVID restrictions. In 2023 Petitioner claims he received a call from a Navy Judge Advocate informing him that he was being dropped from the TDRL. Petitioner contends he still has significant limitations due to his back injury and asks for return to TDRL or placement on the PDRL. The Board noted that NPC typically notifies service members that they are required to undergo a PPE in order to accomplish final adjudication of their TDRL status.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board determined that the interests of justice support having the PEB conduct a review of his case for final adjudication. In reaching this conclusion, the Board noted that Petitioner may not have received PPE notification, as there is no documentation in relevant records demonstrating Petitioner was notified of the required PPE prior to his administrative removal from the TDRL. The Board determined that the Petitioner warrants placement back on the TDRL, effective the date he was removed, for the sole purpose of conducting a PPE and undergoing final adjudication by the PEB.

Despite the Board's recommendation to grant relief as a matter of injustice, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner, including placing him on PDRL. Specifically, the Board found that there was insufficient evidence to demonstrate that Petitioner should be transferred to PDRL immediately.

RECOMMENDATION

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

Petitioner be placed back on the TDRL, effective the date he was administratively removed, for the sole purpose of conducting a PPE and final adjudication by the PEB.

Note: NPC will correct any other entries affected by the Board's recommendation.

Note: The Defense Finance and Accounting Service will audit Petitioner pay records to determine amounts due, if any.

That a copy of this report of proceedings be filed in Petitioner's naval record.

That no further changes be taken on 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.

9/21/2024

