



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

█
Docket No. 3483-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) Title 10 U.S.C. § 1552
(b) USD Memo, 25 Aug 17 (Kurta Memo)
(c) DoDI 1332.18
(d) Petitioner's Case File

Encl: (1) DD Form 149

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 being placed on the Permanent Disability Retired List (PDRL) with combat related special compensation (CRSC).

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 5 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 the enclosures, relevant portions of the naval records, and applicable statutes, regulations, and policies to include reference (b) and (c).

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. Petitioner entered active duty in the United States Marine Corps on 10 December 2001. On 25 March 2003, while participating in a training event, Petitioner was in a HUMVEE rollover accident. Petitioner was hospitalized for five days and discharged with a diagnosis of severe low back strain. He later developed right inguinal hernia, which required surgery. Petitioner's pain improved and he deployed to █ in support of Operation █ Freedom from 1 February 2005 to 6 August 2005. Upon return, Petitioner sought treatment for back pain. Despite multiple treatments, Petitioner's pain did not improve, and he was referred to the Physical Evaluation Board (PEB) for low back pain and right inguinal hernia. On 11 February 2008, the PEB found Petitioner Unfit due to Degenerative Disc Disease, Department of Veterans Affairs (VA) Code

5343 at 30%. In addition, the Board found the condition was combat related, as an instrumentality of war. On 28 April 2008, Petitioner transferred to the TDRL and was awarded CRSC.

c. On 29 December 2010, Walter Reed National Naval Medical Center (NNMC) sent a letter to Petitioner to schedule his periodic physical examination (PPE). NNMC sent a second letter on 20 January 2011. On 18 March 2011, NNMC sent a letter to Headquarters Marine Corps (HQMC) stating their office was unsuccessful in reaching Petitioner in order to schedule the TDRL PPE examination. On 4 April 2011, HQMC sent Petitioner a letter informing him of termination of retirement pay on 4 May 2011 due to failure to report for PPE. Petitioner was administratively removed from the TDRL on 2 December 2013.

d. Petitioner contends that he was removed from TDRL due to an inability to respond or attend a physical examination because of family stressors and a worsening of his condition. Petitioner further argues he was diagnosed with traumatic brain injury (TBI) and epilepsy as result of the TBI and argues he should also be found unfit for those conditions.

e. The Council of Review Boards (CORB) reviewed Petitioner's case and noted per reference (c), when a service member is placed on TDRL, the Military Department is supposed to review DoD and/or Department of Veterans Affairs (VA) medical treatment records of the service member within 16 months of being placed on TDRL. The Military Department may rely on that documentation to determine whether there has been a change in disability. The CORB noted Petitioner received a VA rating of 20% for VA Code 5237 Lumbar Strain/Degenerative Disc Disease effective 27 September 2011. The CORB surmised, as this disability evaluation falls within the five-year TDRL period from Aug 2008 to Aug 2013, adoption of the VA rating is appropriate. Consequently, the CORB found the evidence supported a finding that Petitioner remained unfit for naval service at a 20% disability rating; resulting in separation with severance pay.

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 concurred with CORB that there was sufficient evidence from the medical records to support Petitioner continuing to be unfit for service due to Degenerative Disc Disease. In addition, the Board found that, had the Petitioner attended a PPE, his condition would be found at a 20% rating. Therefore, the Board concluded Petitioner warrants separation with severance pay.

Despite the Board's recommendation to grant partial 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 adding the TBI or epilepsy diagnoses as unfitting conditions. Specifically, the Board determined there was insufficient evidence to support the contention that Petitioner was unfit for TBI and epilepsy at the time of his discharge from active duty. The Board observed there were no diagnoses of TBI or epilepsy in the active duty medical record and the clinical records indicated no loss of consciousness during the rollover incident. Further, the Board considered that Petitioner was never referred to a medical board for either condition and

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no non-medical assessment was prepared documenting his inability to perform the duties of his office, grade, rank or rating as a result of either condition.

RECOMMENDATION

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

Petitioner be found Unfit, effective 4 May 2011, and given a rating of 20%, for the following conditions:

1. Lumbosacral Spondyloarthropathy, rated at 20%, combat related (CR (IOW)), non combat zone (NCZ). Separation with severance pay.

Petitioner's record be corrected to document he was released from the TDRL based on the above disability rating with severance pay vice administratively removed from the TDRL.

Note: Headquarters, U.S. Marine Corps will correct any other entries affected by the Board's recommendation.

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.

That no further changes be made to 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.

10/1/2024

