



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

██████████  
Docket No. 4313-24  
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 ██████████ USMC

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

Encl: (1) DD Form 149 w/attachments  
(2) Physician Advisor, Board for Correction of Naval Records, ltr of 12 November 2024

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 he be placed on the permanent disability retired list (PDRL).

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 14 November 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.

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 did not file his application in a timely manner, the Board waived the statute of limitation in the interest of justice and considered Petitioner's application on its merits.

b. A review of Petitioner's reference (b) Official Military Personnel File (OMPF) reveals that he enlisted in the Marine Corps and commenced active duty on 7 January 2008. As described more fully in the advisory opinion (AO) contained at enclosure (2), beginning on or about 22 June 2015, Petitioner underwent psychiatric evaluations and treatment from time to time while he was in service. Petitioner continued receiving mental health treatment and was eventually placed into the Disability Evaluation System (DES). On 21 April 2016, the Department of Veterans' Affairs (VA), in its capacity within the Integrated DES (IDES) submitted its proposed rating for Petitioner's condition of adjustment disorder with mixed anxiety and depressed mood with a 30% disability evaluation.

c. On 11 May 2016, an Informal Physical Evaluation Board (IPEB) found Petitioner unfit for the condition of chronic adjustment disorder (VA Diagnostic Code 9440) and recommended that

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he be placed on the temporary disability retired list (TDRL) at a 30% disability evaluation. On 18 August 2016, Petitioner applied to the Department of Veterans' Affairs for reconsideration of his disability percentage contending new medical evidence supported a disability evaluation of 50%. On 13 October 2016, the VA determined that no change was warranted in its decision of proposed evaluation of Petitioner's chronic adjustment disorder. On 16 December 2016, he was discharged to the TDRL at 30% disability evaluation for chronic adjustment disorder.

d. Distinct from Petitioner's review in the service disability retirement program within the DES, on 5 January 2017, the VA issued Petitioner a post-service rating decision within the VA disability system, which granted him VA disability benefits for adjustment disorder with mixed anxiety and depressed mood, sleep disturbances, depression, PTSD personal trauma with 30% disability evaluation effective 17 December 2016.

e. On 3 October 2018, while on the TDRL, Petitioner underwent a periodic physical evaluation and was reviewed by an IPEB; which found him to continue to be unfit due to chronic adjustment disorder at a 10% disability rating and recommended him for separation with severance pay. Petitioner did not accept the findings of the IPEB and requested an appearance before a Formal Physical Evaluation Board (FPEB). The FPEB convened on 11 January 2019, and reported its findings on 31 January 2019. The FPEB essentially concurred with the finding of the IPEB finding Petitioner to be unfit due to chronic adjustment disorder and recommended he be separated from the TDRL with severance based on a service disability rating of 10%. In the Formal Rationale of the findings of the FPEB, the members explained that Petitioner was, at the time of the FPEB, a full time student who takes care of large animals on his farm, and that he was functioning well as a student earning excellent grades and not missing school and engaging socially with family and friends.

f. Petitioner did not accept the findings of the FPEB and, on 1 March 2019, filed a Petition for Review (PFR). In his PFR, Petitioner requested his unfitting condition of chronic adjustment disorder be assigned a 30 percent disability rating and that he be transferred to the PDRL. On 8 March 2019, Director, Secretary of the Navy Council of Review Boards (SECNAV CORB) denied the PFR, explaining that, according to Petitioner's records, he was able to successfully participate in a college-level program while simultaneously managing a 20-acre farm, and there was no objective evidence he experienced periods where he could not perform either task.

g. On 20 March 2019, President, PEB notified Commandant of the Marine Corps that Petitioner had been found unfit and requested the Commandant to effect Petitioner's separation from the Marine Corps with severance pay. Thereafter, on 1 May 2019, Petitioner was discharged from the TDRL

h. In his application, Petitioner requested to be placed on the PDRL. In support of his request, he contended that his removal from the TDRL was in error. In order to assist it in reviewing Petitioner's application, the Board obtain the enclosure (2) from a qualified medical professional, which was considered favorable to Petitioner's request. The AO set forth a review of Petitioner's various medical evaluations and treatments at the relevant times herein. Among other things, the AO considered the evidence and arguments that were used at the various stages of Petitioner's DES processing, including through his PFR, which was denied, as well as

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applicable medical documentation from the VA. According to the AO, with respect to the denial of Petitioner's PFR:

there exists significant clinical and non-clinical evidence rebutting this characterization of Petitioner's stability at a higher level of occupational and social functioning as perceived by the PEB and CORB. The evidence presented by Petitioner and counsel was in part available during the FPEB and CORB deliberations, but also contained within new and material evidence presented to the BCNR which allowed a more accurate and fuller understanding of Petitioner's mental health condition during the period of his TDRL Periodic Reevaluation, IPEB and FPEB deliberations, and the Director, SECNAV CORB denial of Petitioner's PFR.

i. According to the AO, with respect to the characterization of Petitioner's academic functioning, clinical and nonclinical evidence explained that in order to maintain his level of academic success, Petitioner had to rely on a considerable amount of support resources from the VA's Vocational and Rehabilitation and Employment Services, which included allowing extended time for testing and assignments, ability to get up and move around during classes, to take breaks as needed during classes, individualized settings for examinations to minimize distractions and anxiety, extra instructional time from his instructors), and the like. With respect to Petitioner's ability to maintain his small farm, he explained that Petitioner in fact had great difficulty in attempting to adequately perform the minimum level of activity to maintain the farm. Further, according to the AO, Petitioner had not been able to obtain regular employment and was only able to secure short-lived part-time jobs in retail and tutoring. Further, according to the AO, Petitioner provided evidence that, according to his therapists, he required psycho-therapeutic modalities to his treatment regimen to address areas of his clinical condition that were not responding to his current psychotherapeutic approaches.

j. The AO explained that, after careful consideration of all available objective clinical and non-clinical evidence, "the preponderance of evidence indicates that the Petitioner's psychological condition at the time of his separation from the TDRL with severance pay more closely indicated a level of occupational and social impairment commensurate with a VA Disability determination of 'Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care and conversation' which correlates to a disability evaluation of 30%." Further, according to the AO:

Should 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 from the TDRL (June 2017):

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

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1. Post Traumatic Stress Disorder (previously rated as Chronic Adjustment Disorder) VA Code 9411, rated at 30%, permanent and stable, not combat related (NCR), non- combat zone (NCZ).

This results in a combined rating of 30%.

k. 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 his discharge from the TDRL his level of occupational and social impairment more closely correlated with a disability evaluation of 30% warranting consideration of continuation on the TDRL or discharge to the PDRL."

## CONCLUSION

Upon review and consideration of the evidence of record, the Board concluded that there was an error in Petitioner's naval record that warrants relief. Specifically, the Board concurred with the findings of the AO, which it found set forth a logical framework of analysis based on an objective review of substantial evidence, which demonstrated that based on the constellation of Petitioner's current symptoms, his condition should be currently identified as post traumatic stress disorder and placed on the PDRL. In terms of the disability retirement rating, the Board determined that the findings described by the AO were rational and based on substantial medical evidence and that 30% was appropriate.<sup>1</sup> Accordingly, the Board made the following recommendation.

## RECOMMENDATION

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

That Petitioner be placed on the PDRL effective 1 May 2019 as follows:

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

1. Post Traumatic Stress Disorder (previously rated as Chronic Adjustment Disorder) VA Code 9411, rated at 30%, permanent and stable, not combat related (NCR), non- combat zone (NCZ).

This results in a combined rating of 30%.

The DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's discharge with severance and any lawful monies owed.

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<sup>1</sup> In reaching its decision on a service disability rating for Petitioner in the PDRL, the Board fully considered the provision of 38 CFR § 4.129, and determined that in light of the time elapsed from when he was placed on the TDRL, to the time of his removal therefrom, and in review of the interval medical records of examination, and in light of the medical opinion from the AO, the rating of 30% is warranted under the circumstances.

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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.

1/16/2025

