



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

██████████
Docket No. 5034-24
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 13 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) with a rating of 40%.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 21 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. In addition, the Board considered enclosure (2), an advisory opinion (AO) from a qualified medical professional. The AO was considered favorable to Petitioner.

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 was commissioned in the Marine Corps and commenced active duty on 23 July 2014. During his service, Petitioner was placed into the Disability Evaluation System (DES) for evaluation of his fitness due to his diabetes condition. On 8 April 2020, the Department of Veterans' Affairs (VA), in its role within the Disability Evaluation System, rated Petitioner's diabetes condition at 20%. On 21 April 2020, an Informal Physical Evaluation Board (IPEB) found Petitioner to be unfit due to Type I Diabetes Mellitus Without Complication (VA 7913) at 20%. On 29 April 2020, Petitioner filled out his Election of Options form, in which he accepted the finding of the IPEB. On 6 May 2020, President, Physical Evaluation Board (PEB), informed Commandant of the Marine Corps (CMC) that Petitioner was found unfit at 20% and that he

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

XXX XX [REDACTED] USMC

should be separated with severance. On 15 July 2020, Petitioner was separated with severance from the Marine Corps.

c. In his application, Petitioner requested to be placed on the PDRL with a rating of 40%. In support of his request, he contended that his condition warranted a 40% disability assignment at the time of the initial rating decision.

d. In order to assist it in reviewing Petitioner's application, the Board obtain the enclosure (2) AO. The AO set forth a review of Petitioner's various medical evaluations and treatments at the relevant times herein. According to the AO:

As this case was processed via the Integrated Disability Evaluation system (IDES), the PEB accepted the proposed disability rating of the compensable unfitting condition rendered by the VA Disability Evaluation System Rating Activity Site (D-RAS), as first established in DTM-11-015 (19 Dec 2011) and reaffirmed in DODI 1332.18 (17 May 2018). The PEB has no statutory or regulation authority to modify the rating provided by the VA. However, and as set forth in regulation, if the Applicant believed the rating provided by the VA was incorrect, he had the right to appeal the VA rating that agency submitted prior to his separation.

In this case, the Applicant did not appeal the VA rating, thus accepting their decision and the associated rating at the time of separation. While procedurally valid, the case at hand does show an obvious error by VA raters in not identifying physician's treatment plans which included not only insulin administration multiple times daily and dietary modifications, but also specific treatment requirements that he must avoid strenuous or rigorous physical activities to avoid provoking hypoglycemic episodes which together with the requirement for insulin multiple times daily and dietary modifications, qualified the Applicant for a 40% disability rating.

The restrictions on physical activity and training, as well as dietary requirements, were identified in the NMA as a key issue in Petitioner's ability to adequately perform his military occupational requirements and continue to serve adequately at his rank, rate, and specialty informing the PEB finding of unfitness for continued service.

Ultimately, this is a case where relief is recommended to correct an injustice. While the Petitioner accepted the IPEB recommendations (and in doing so waived his right to a VA rate reconsideration), the D-RAS error is obvious. Given evidence of treatment requirements for his condition of Type I DM at the time of his discharge processing, which specifically included insulin, restricted diet, and regulation of activities, Petitioner qualified for the 40% disability rating.

e. The AO concluded, "in my medical opinion, the preponderance of objective evidence does support the request. Although the Physical Evaluation Board adjudicated this case in a procedurally valid manner, relief is appropriate based on a clear rating error by the VA Disability Evaluation System Rating Recommendation decision, that was not previously realized, and a

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

XXX XX [REDACTED] USMC

request for correction brought forth until this petition.” In light of the foregoing, the AO suggested that, 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 (15 July 2020):

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

1. Type I Diabetes Mellitus without Complication, VA Diagnostic Code 7913, rated at 40%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

This results in a combined rating of 40%.

CONCLUSION

Upon review and consideration of the evidence of record, the Board concluded that there was an injustice 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. 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 40% was appropriate. 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 15 July 2020 as follows:

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

1. Type I Diabetes Mellitus without Complication, VA Diagnostic Code 7913, rated at 40%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

This results in a combined rating of 40%.

That the DFAS 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.

That Petitioner be issued a new Certificate of Discharge or Release From Active Duty (DD Form 214), for the period ending 15 July 2020, reflecting that at the time Petitioner was discharged with severance, he was placed on the PDRL, with all other blocks in the form conforming, if necessary, to reflect such placement on the PDRL (including SPD, reentry code, as deemed appropriate).

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

XXX XX [REDACTED] USMC

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

