



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

██████████
Docket No. 5150-24
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 15 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 provided a medical disability retirement.

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.

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 reference (b) reveals that Petitioner enlisted in the Marine Corps and commenced active duty on 9 July 2012. On 11 February 2014, Petitioner was issued a 6105 counseling stating that on 11 February 2014, he was subject to company level nonjudicial punishment for failing to report to his appointed place of duty and for failing to obey a noncommissioned officer during corrective actions. Petitioner received an adverse fitness report for the period 1 October 2016 through 15 November 2016, which details that he received a 6105 counseling due to being a passenger in a car with another Marine that was driving under the influence. On 14 December 2016, Petitioner was discharged with a General (Under Honorable Conditions) characterization of service due to pattern of misconduct. Petitioner's administrative separation documentation is not in reference (b).

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMC

c. In 2017, Petitioner filed an application with the Navy Discharge Review Board (NDRB) and was denied relief. In 2023, Petitioner filed another application with the NDRB; which found in Petitioner's favor and changed his characterization of service to Honorable, his narrative reason for separation to Secretarial Authority, and his separation program designator to JFF1.

d. In his application to this Board, Petitioner requested to be provided a medical disability retirement. In support of his request, he contended that while he was on active duty, he had a variety of mental health conditions that should have resulted in him being given a medical disability retirement, but instead he was separation for misconduct.

e. In order to assist it in reviewing Petitioner's application, the Board obtain the enclosure (2), a 15 November 2024 AO 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. According to the AO:

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner's history of major psychological symptoms and diagnosed mental health conditions, coupled with resulting pathological behaviors that culminated in charges of misconduct and administrative separation, as well as periods during his treatment that he was deemed unfit for full duty or access to small arms, were sufficient evidence of occupational and social impairment that warranted referral to a Medical Evaluation Board for evaluation whether his mental health condition called for referral to the Physical Evaluation Board for a determination of fitness for continued service. The condition to be referred for consideration by the MEB would have been Cyclothymic Disorder, VA Diagnostic Code 9431, not combat related (NCR), non-combat zone (NCZ).

f. The AO concluded, "in my medical opinion, the preponderance of objective clinical and nonclinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he may have been unfit for continued military service and his mental health condition should have been reviewed by a MEB for consideration for referral to the DES."

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. The Board thus concluded that Petitioner should be invited to be invited to participate within the DES, which referral shall be accomplished within three months following the date of this decision. Thereafter, the guidance of the applicable DES instructions, memoranda, and the like will apply to the processing of Petitioner through the DES.

RECOMMENDATION

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMC

That within three months of the date of this letter, Petitioner shall be invited to be placed into the Integrated Disability Evaluation System (IDES) for review by a Physical Evaluation Board (PEB) of whether, at the time of his naval service, he was unfit within the meaning of the IDES for Cyclothymic Disorder, VA Diagnostic Code 9431, or any other condition the IDES reasonably finds to have been unfitting at the relevant time. If Petitioner is found to have been unfit, he shall be placed on the permanent disability retired list (PDRL) or separated with severance in accordance with the regular practice of the PEB and Headquarters, U.S. Marine Corps. Further, to the extent it appears Petitioner will be entitled to back pay as a result of any findings by the PEB, Headquarters, U.S. Marine Corps shall coordinate with the Defense Finance and Accounting Service (DFAS) for appropriate calculation and disposition of same.

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

