



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

[REDACTED]
Docket No. 5277-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,
XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149
(2) Advisory Opinion, 22 Nov 24

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 a permanent medical retirement.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 26 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 the naval records, and applicable statutes, regulations, and policies to include the enclosure (2), an advisory opinion (AO) furnished by a qualified medical professional. The AO was considered favorable toward Petitioner.

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner attended the United States Naval Academy and, upon graduation was commissioned as an Ensign, began active duty service on 25 May 2001. Petitioner deployed on numerous overseas combat missions supporting special operations, to include two combat tours as a [REDACTED] with [REDACTED] in [REDACTED]. Petitioner received several awards as a result of his service to include: the Bronze Star "V" Medal, Army Commendation Medal, Joint Service Achievement Medal, [REDACTED] Campaign Medal, [REDACTED] Campaign Medal, and Combat Action Ribbon.

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c. While conducting pre-deployment training, freefall jumps and fast roping, for a third combat tour in [REDACTED], Petitioner injured his neck. Petitioner was treated with steroid dose pack and deployed. However, he continued to have significant neck pain radiating to the left upper extremity progressing to arm pain then profound weakness in his left triceps. On 9 June 2007, he was medically evacuated to [REDACTED] Regional Medical Center (RMC) for further evaluation. Subsequently, Petitioner was diagnosed with Left Upper Extremity Radiculopathy and cervical disc herniation. MRI revealed large left paracentral C6-7 disc herniation with severe left neural foraminal compromise. Petitioner was diagnosed with Herniated Intervertebral Disc-Cervical, Cervical Neuritis C5-6, Cervical Radiculopathy and arranged for Neurosurgical Consult for definitive treatment at Naval Medical Center [REDACTED] (NNMC).

d. On 22 June 2007, Petitioner underwent surgery, a Left C6-7 foraminotomy and discectomy at NNMC. After extensive therapy and rehabilitation he continued to have with significant weakness with neurological symptoms of tingling in left index, middle and fourth fingers. Physical examination noted decreased tactile sensation to left 2, 3, 4 fingers, decreased muscle bulk on left triceps with decreased strength to left triceps. Petitioner underwent a C6-7 cervical discectomy and spinal fusion on 28 December 2007. At his 7 February 2008, follow-up appointment, the neurosurgeon stated Petitioner's "administrative situation is very confusing. He will need to follow up here in 6 weeks. If the fusion is maturing well, he would be fit for separation. He does likely have permanent damage of the C7 nerve as he does still have some mild weakness in his left triceps. He will discuss with a VA counselor and med boards counselor as to whether he should pursue a medical board." At his 12 August 2008, separation physical exam the physician noted Petitioner had persistent deficits with left upper extremity weakness was not fit for special duty as a [REDACTED] given persistent neuro deficits. On 31 August 2008, Petitioner was released from active duty and transferred to the Naval Reserve at the completion of active required service with an Honorable Discharge.

e. Petitioner contends that he warrants placement on the permanent disability retirement list (PDRL) for injuries sustained during multiple combat deployments to his neck and upper extremities resulting in multiple surgeries with resultant chronic neck and left arm pain, as well as profound loss of muscle tone, weakness and function to left arm and hand that rendered him unable to perform his required duties as a special forces operator. He further argues his physical injuries, combined with his post-injury depression and loss of mission and personal focus, led to feeling "lost and abandoned" by the "medical department bureaucracy" and unsure of how to proceed further towards appearing before a Medical Evaluation Board to determine his ability to return to duty or be medically retired. Petitioner felt his only recourse was to request discharge to return to his family and try to recover from his medical and psychological injuries in a safer, supportive environment. Petitioner argues it was an error for him to be discharged without being assessed for medical retirement.

f. The Board sought enclosure (2) from a qualified medical professional regarding Petitioner's request. The AO stated in pertinent part:

Review of the available objective clinical and non-clinical evidence documented Petitioner successfully executed the full range of responsibilities of his rate and rank up through 2007 as reflected in his performance evaluations. However, once

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he sustained his neck and left upper extremity injuries, which continued to worsen despite treatment, his injury eventually rendered him incapable of executing his military duties during which he entered into serial periods of duty limitations, and then a period of Limited Duty without returning to a full duty status.

Unfortunately, his administrative status became “confusing” with his neurosurgical providers at NMMC [REDACTED], orthopedic providers at NMC [REDACTED], operational medical providers at [REDACTED] Medical Departments, parent Command, and the Disability Counselors and PEB Liaison Officers unable to assist him in navigating a path to a definitive medical disposition. Described as being in an administrative “limbo,” Petitioner eventually requested to be discharged from service to return home to his family feeling this was the only viable path to regaining his physical and mental health. His command, instead of advocating for a definitive medical disposition, inadvertently supported a premature separation from service forcing Petitioner to seek assistance from outside the service resulting in delays in receiving appropriate care.

The AO concluded, “in my medical opinion, the preponderance of evidence supports Petitioner’s contention that at the time of discharge from military service, he was unable to fulfill his military duties due to his medical condition incurred in the course of his military service. There is evidence to support his condition warranted referral to the Disability Evaluation System (DES) for adjudication for unfitness for continued service and consideration for medical retirement. At the time of his discharge, his clinical records contained sufficient evidence of continuing neck, left upper extremity, and left hand occupational impairment compromising his ability to return to full duty in his military occupational specialty as a [REDACTED] officer.

g. The AO further noted Petitioner was granted service connection by the Department of Veterans Affairs effective 1 September 2008, the day after his release from active duty, for: Spinal Fusion (VA Diagnostic Code 5241 at 20% disability evaluation), Paralysis of LU Median Nerve (VA Code 8515 at 10%), and Lumbosacral or Cervical Strain (VA Code 5237 at 10% disability evaluation).

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. Therefore, the Board determined it was in the interests of justice to place Petitioner on the PDRL effective the date of his discharge. In terms of the disability retirement rating, the Board determined that the applicable disability ratings assigned to Petitioner by the VA are based on substantial medical evidence and that a total combined rating of 30% was appropriate. Accordingly, the Board made the following recommendation.

RECOMMENDATION

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

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Petitioner be found Unfit and placed on the Permanent Disability Retired List at a combined rating of 30%, effective 1 September 2008, for the following conditions:

1. Spinal Fusion, (Stable) VA Diagnostic Code 5241, rated at 20%, combat related (CR), combat zone (CZ)
2. Paralysis of Left Upper Median Nerve (Stable), VA Diagnostic Code 8515, rated at 10%, combat related (CR), combat zone (CZ)
3. Lumbosacral or Cervical Strain (stable), VA Diagnostic Code 5237, rated at 10%, combat related (CR), combat zone (CZ)

Change Petitioner's narrative reason for separation and associated separation code to transfer to the PDRL.

Note: Navy Personnel Command will correct any other entries affected by the Board's recommendation and will issue a DD Form 215 or a new DD Form 214, whichever one they deem appropriate, that reflects the Board's corrective action.

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.

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.

1/16/2025

