



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

█
Docket No. 5594-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █ USN,
█

Ref: (a) Title 10 U.S.C. § 1552
(b) DoDI 1332.18
(c) 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 back on the Temporary Disability Retired List (TDRL).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 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.

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 entered active duty in the United States Navy on 20 September 2002. Petitioner deployed to █ in support of █ from 16 June 2006 until 13 December 2006. In July 2012, the Physical Evaluation Board (PEB) found Petitioner Unfit due to Major Depressive Disorder (MDD) (50%), Department of Veterans Affairs (VA) Code 9411-9434, right hip limitation of flexion (10%), VA Code 8009-5253, and pain in the joint pelvic region and right thigh (0%), VA Code 8009-5253. On 28 November 2012, Petitioner transferred to the TDRL with a combined 60% rating.

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[REDACTED]

c. Petitioner was administratively removed from the TDRL in August 2018, although there is no information on why the Petitioner did not undergo a periodic physical examination (PPE). In his application, Petitioner contends he still has significant limitations due to his MDD and physical conditions. He requests placement back on the TDRL in order to complete his PPE.

d. The Board noted per reference (b), when a service member is placed on TDRL, the Military Department is supposed to review Department of Defense and or Department of Veterans Affairs (VA) medical treatment records of the service member within 16 months of being placed on TDRL. In addition, the Military Department may rely on that documentation to determine whether there has been a change in disability. The Board noted Petitioner received clinical care for MDD and was diagnosed with Post-Traumatic Stress Disorder (PTSD) from the VA while on TDRL, and the VA rated the condition at 70%. In addition, the Board found Petitioner continued to be rated for right hip limitation of flexion at 10% and pain in the joint pelvic region and right thigh at 0%. The Board found the evidence supports a finding that Petitioner remained unfit for naval service at the 70% disability rating and concluded placement on the Permanent Disability Retirement List (PDRL) was more appropriate, rather than returning Petitioner to the TDRL for further adjudication by the PEB.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board noted that there was sufficient evidence from the medical records to support a finding that Petitioner continues to be unfit for service due to his previous unfitting conditions. Based on the available medical records, the Board concluded it was in the interest of justice to transfer him to the PDRL, as provided below, effective the date of his removal from the TDRL.

RECOMMENDATION

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

Petitioner be found Unfit and placed on the Permanent Disability Retired List, effective the date he was removed from the TDRL, at a combined rating of 70%, for the following conditions:

1. Major Depressive Disorder and Post Traumatic Stress Disorder (Stable) VA Diagnostic Code 9411-9432, rated at 70%, not combat related (NCR), not incurred in a combat zone (NCZ).
2. Right Hip Limitation of Flexion (stable) at 10%, DC 8009-5253. Not combat related (NCR), not incurred in a combat zone (NCZ).
3. Pain in Joint Pelvic Region and Right Thigh, (presumed stable at 0%, DC 8009-5253. Not combat related (NCR), not incurred in a combat zone (NCZ).

Note: Navy Personnel Command shall correct any other entries affected by the Board's recommendation.

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[REDACTED]

If required, the Defense Finance and Accounting Service will audit the Petitioner's pay account to determine amounts due, if any.

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.

10/22/2024

