



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

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Docket No. 5830-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USN
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Ref: (a) Title 10 U.S.C. § 1552
(b) Petitioner's Official Military Personnel Folder

Encl: (1) DD Form 149 w/attachments

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), seeking to have his naval records reflect that he was medically retired effective 2019, and that he be granted Combat Related Special Compensation (CRSC) from that date.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 7 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 Petitioner's application, enclosure (1), together with all material submitted in support thereof, relevant portions of Petitioner's naval record, 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 waived the statute of limitations and considered the case on its merits in the interest of justice.

b. A review of reference (b) reveals that Petitioner enlisted in the Navy and commenced a period of active duty on 6 August 1998. He completed his initial period of active duty on 5 August 2002 and transferred to the Navy Reserve. While a member of the Navy Reserve, Petitioner commenced a period of active duty on 12 January 2006 in support of Operation Enduring Freedom. On 26 October 2006, Petitioner was released from active duty and transferred to the Navy Reserve. On 11 February 2007, Petitioner commenced another period of active duty. On 26 June 2007, he consulted with a psychologist while he was in Kuwait, and he was evaluated for suitability for retention. After setting forth background information, the psychologist concluded:

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN
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1. The service member is fit for duty. He is responsible for himself and his actions. There are no psychiatric contraindications to any disciplinary action deemed necessary by the command. He is not imminently suicidal or homicidal and not manifesting symptoms of psychosis. Given his history of aggressiveness, however, he is not recommended to carry a weapon. Review of the interview and test data suggests that the patient meets criteria for a Personality Disorder NOS with Antisocial, Narcissistic, and Passive Aggressive Features. Given the intensity of operations in this theater and the complexity of work in the customs center, the member is recommended for administrative redeployment back to CONUS and administrative separation per below.

2. The attending psychologist recommends that this member be considered for expeditious administrative for unsuitability in accordance with MILPERSMAN 1910-122. The member does not suffer from a medically boardable mental illness. This member does, however, manifest a longstanding disorder of character, behavior, and adaptability of such severity that the member's ability to function in the military environment is severely impaired. While not imminently suicidal or homicidal, the member may become dangerous to himself or others in the future. If retained in theater, he will likely be an ongoing administrative burden to the command.

3. No further psychological evaluation or mental health treatment is indicated at this time. The patient does not desire treatment, but strongly desires to be out of the military

c. On 23 July 2007, in light of his forthcoming administrative separation, Petitioner was found to be fit for separation. That same day, Petitioner's command informed him that he was being administratively separated due to personality disorder. On 13 August 2007, Petitioner underwent another medical screening for separation, which found him to be physically qualified to separate. On 7 August 2007, the separation authority informed Commander, Navy Personnel Command, that Petitioner was separated due to convenience of the government – personality disorder. On 8 August 2007, Petitioner was discharged and assigned an RE-3G reentry code.

d. Despite Petitioner's apparent separation, according to a Page 13 entry in Petitioner's OMPF, he was recommended for reenlistment. Further, despite the documentation above reflecting that Petitioner was discharged due to personality disorder, and the additional documentation showing he was discharged at his EAOS, Petitioner's OMPF reflects that he continued in service in the Navy Reserve. Thus, Petitioner received an evaluation from 16 March 2016 through 15 March 2017, which reflected he was serving an in Operational Support Unit for ██████████. The evaluation stated that Petitioner was in a non-drilling status during the reporting period. On 12 September 2017, Navy Bureau of Medicine and Surgery (BUMED) sent a letter to Petitioner's ██████████ stating that Petitioner did not meet established physical standards due to herniated disc, left ulnar neuropathy, anxiety disorder, mood instability consistent with bipolar II disorder, antisocial personality traits, and cluster B traits. BUMED further stated Petitioner was not recommended for retention in the Navy Reserve. On 1 February 2018, Petitioner was notified of BUMED's determination, and he requested to be reviewed by

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

the Physical Evaluation Board. On 18 March 2018, Petitioner underwent a separation physical, which found him fit for separation.

e. On 6 November 2018, an Informal PEB (IPEB) found Petitioner to be not physically qualified (NPQ) due to several medical conditions, which the IPEB explained were not a proximate result of performing military duty. On 7 November 2018, the IPEB informed Petitioner of its decision. On 28 November 2018, Petitioner requested to be reviewed by a Formal PEB (FPEB). The FPEB held a hearing on 31 January 2019 and transmitted its decision to Petitioner on 12 February 2019. The FPEB found that he was NPQ due to a variety of medical conditions. The FPEB also prepared a written Formal Rationale, in which it explained:

The Service member does not have a Line of Duty Benefits - Health Care letter for any of the conditions. He testified that he has been on medical hold for the last 7 years and has not been drilling for the last 12 months. He also testified that all of the conditions limit him from performing his duties. Specifically, he stated that his conditions limit his travel from school to [REDACTED] to report for duty.

f. On 19 February 2019, Petitioner filled out his Election of Options form indicating that he accepted the decision of the PEB and that he was waiving his right to file a Petition for Review. On 27 February 2019, President, PEB, transmitted the Notification of Decision that Petitioner was not physically qualified to Chief of Naval Personnel. Petitioner's final date of service is not available in his OMPF, but he reports the date to be 17 December 2019.

g. In his petition, Petitioner requests to be medically retired effective 2019, and that he be granted CRSC from that date. In support of his requests, he asserts that he should have CRSC payments based on exposures and combat, which he states may include mental health conditions at 70%, IBS at 30%, Asthma at 30%, and Tinnitus at 10%. Petitioner asserts he is already receiving 100% Permanent and Total Veterans Affairs (VA) Compensation.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, the Board observed that Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) for the period 11 February 2007 to 8 August 2007 describes his narrative reason for separation as "Convenience of the Government - Personality Disorder." In keeping with the letter and spirit of current guidance, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board determined that Petitioner had no basis for either a medical retirement or CRSC and denied his requests for both. In reaching its decision, the Board observed that in order to qualify for military disability benefits

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

through the Disability Evaluation System (DES) with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing the Petitioner's record, the Board concluded the preponderance of the evidence does not support a finding that he met any of the criteria for unfitness at the time of his discharge. The Board found that Petitioner failed to provide sufficient evidence to demonstrate that he had an unfitting condition either at the time he was discharged from active duty with a personality disorder or at the time he was found NPQ and discharged from the Navy Reserve. In particular, the Board found that the basis for his discharge from active duty due to personality disorder was supported by rational medical evidence. With respect to his discharge from the Navy Reserve due to being NPQ, the Board observed that Petitioner was reviewed by both an IPEB and an FPEB, and that he ultimately accepted the findings of the FPEB. Further, the FPEB was supported by a Formal Rationale, which determined that Petitioner did not have a Line of Duty – Healthcare for any of the conditions for which he was found NPQ, which is a requirement for the FPEB to make a determining of fitness within the DES.

To the extent Petitioner relies upon his post-service ratings by the VA, the fact that the VA may have rated him for disability conditions that it determined were service connected to his time in the service did not persuade the Board these conditions were unfitting at the time of his discharge from the Navy because eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Accordingly, based on the foregoing, the Board denied Petitioner's request for a military disability retirement.

With respect to Petitioner's request for CRSC, the Board observed that Petitioner did not exhaust his remedy by first filing with the CRSC Board. However, even if he had, his petition reflects that he is not qualified for CRSC because he is not entitled to military retirement pay, which is a threshold statutory requirement for being awarded CRSC. Thus, in light of the foregoing, Petitioner denied Petitioner's request for CRSC.

RECOMMENDATION

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

Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 8 August 2007,)” indicating his narrative reason for separation was “Secretarial Authority,” the SPD code assigned was “JFF,” the separation authority was “MILPERSMAN 1910-164,” and the reentry code was “RE-1J.”

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN
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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.

12/3/2024

