



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

██████████
Docket No. 6570-24
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) Advisory Opinion by M.D., Physician Advisor, 3 Dec 24

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 retirement list (PDRL).

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 5 December 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 Petitioner's reference (b) Official Military Personnel File reveals that he enlisted in the Marine Corps and commenced active duty on 3 December 2002. On 25 September 2003, Petitioner received an X-Ray examination after he complained of persistent shortness of breath. The examination reported no definitive findings of Sarcoidosis, but explained he may benefit from further evaluation. On 2 December 2004, a Medical Officer issued a report recommending that Petitioner be separated due to a physical condition, not a disability. On 20 December 2004, Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He acknowledged his rights the same day. On 29 March 2005, Petitioner's administrative separation package was reviewed by a Deputy Group Surgeon, who issued a letter to Petitioner's Commanding General concurring with Petitioner's discharge recommendation, in which he noted that at the time Petitioner's condition

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had not been diagnosed, but that he did suffer from shortness of breath that did not allow him to perform his duties as a Marine. Petitioner was discharged on 8 April 2005 due to Physical Standards, with an honorable characterization of service. According to a document from the Department of Veterans' Affairs (VA) provided by Petitioner provided, shortly after his discharge he was diagnosed with Sarcoidosis for which the VA awarded him a 30% service connected disability effective the day after his discharge, 9 April 2005.

c. In his application to this Board, Petitioner requested to be placed on the PDRL. In support of his request, Petitioner contends that he was improperly discharged from the Marine Corps due to a condition, not a disability, and that shortly after his discharge, the VA diagnosed with Sarcoidosis.

d. In order to assist it in reviewing Petitioner's application, the Board obtain the enclosure (2) 3 December 2024 Advisory Opinion (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:

Petitioner was not referred for evaluation for fitness for duty, therefore there was no command non-medical assessment (NMA) to document command's assessment of Petitioner's ability to execute the duties and responsibilities of his rank and military specialty due to his medical condition. However, comments from his Commanding Officer included statements that due to his condition, specifically stated as Nodular Sarcoidosis, Petitioner had been 'on and off light and Limited Duty since March of 2003.' Petitioner's command officially counseled him regarding his 'Terminal Lung Disease' for which he was notified he would be processed for administrative separation if this chronic illness keeps him from being capable from completing his daily duties as a Marine. Command counseled him again when his 'lung disease was still deemed by the Medical Officer as detrimental to his training and daily duties as a Marine' and informed him that the command had begun administrative processing for separation.

Shortly after discharge from service, Petitioner underwent disability evaluation with the VA. Though the VA Disability Evaluations and Rating Decisions are not available for review, based on his disability evaluation and in-service clinical records, the VA granted him service connection for Sarcoidosis and Chronic Obstructive Pulmonary Disease (COPD) at a 30% disability rating effective 4/9/2005, the day after his discharge from service. Though VA disability ratings are manifestation-based without a requirement that unfitness for military duty be demonstrated, the fact the VA firmly established diagnoses of Sarcoidosis and COPD effective the day after his discharge lends further support that Petitioner's in-service pulmonary condition may have been Sarcoidosis. Had Petitioner been referred to the Disability Evaluation System [DES], and the VA evaluation for proposed disability conditions and ratings for referred and claimed conditions taken place, it is likely the VA would have returned a recommended disability finding identifying Sarcoidosis and COPD as disabling conditions (with an accompanying disability evaluation).

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After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, the preponderance of evidence supported Petitioner's contention that he suffered from an unfitting medical condition that rendered him unable to meet the physical and occupational requirements of his office, grade, rank, MOS, or rating and warranted referral to the DES for adjudication of fitness for continued military service for the suspected condition of Sarcoidosis/COPD.

e. The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he suffered from a medical condition that rendered him unfit for continued military service and warranted referral to the DES for evaluation for fitness for duty."

CONCLUSION

Upon review and consideration of the evidence of record, the Board concluded that there was an error in Petitioner's naval record that warrants partial 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 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.

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 Sarcoidosis, or any other condition the PEB reasonably finds to have been unfitting at the relevant time.

If Petitioner is found to have been unfit, he shall be placed on the 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 for appropriate calculation and disposition of same.

That a copy of this report of proceedings be filed in Petitioner's naval record.

That no further changes be made to 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.

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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.

1/17/2025

[REDACTED]