



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

[REDACTED]
Docket No. 9048-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) Naval Record
(c) SECNAVINST 1850.4 (series)
(d) SECNAVINST 5420.193, 19 Nov 97
(e) LOD-B for DES SOP, 2 Aug 22

Encl: (1) DD Form 293 w/enclosures
(2) CNPC (PERS 95) 5400 Ser 95/845 Memo, subj: Advisory Opinion ICO [Petitioner],
4 October 2024

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 his record reflect medical retirement.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 30 January 2025 and, pursuant to its regulations, determined 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 of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds 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.

b. A review of reference (b), Petitioner's naval record, reveals he enlisted in the Navy Reserve in May 2010 and served with the Navy Reserve until his separation in April 2021.

c. Petitioner was recalled to active duty in support of Operation Enduring Freedom (OEF) per Presidential Executive Order and served as a Professional Registered Nurse in the OEF Theater; to include [REDACTED] from 17 August 2013 to 1 March 2014. A review of his Post Deployment Health Re-Assessment indicates Petitioner immediately began experiencing symptoms of Post-Traumatic Stress Disorder (PTSD) upon his return from deployment and release from active duty.

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d. While Petitioner was in the Navy Reserve, in the 2019 timeframe, he was placed into Medical Readiness Review (MRR)¹ and found “Not Physically Qualified (NPQ) – Not Recommended for Retention.”² An Informal PEB³, convened 7 October 2020 to consider Petitioner’s appeal of the MRR finding, concurred in the disposition Petitioner was NPQ. On 13 February 2021, a Formal PEB⁴ determined the evidence established Petitioner was not physically qualified to reasonably perform the duties of his designator/rating. He was separated from the Navy Reserve in April 2021.

e. Concurrent to the MRR process, Commanding Officer, [REDACTED], submitted a Line of Duty Healthcare (LOD-HC) request to PERS-95 after determining Petitioner’s diagnosed PTSD was “related to dealing with mortally wounded service members daily” while in the OEF Theater and “aggravated by being at drill.” Review of Petitioner’s naval record did not reveal a final determination of the LOD-HC request⁵.

f. Petitioner contends he was never offered the Line of Duty (LOD) mechanism to address his diagnosed PTSD and anxiety despite his well-documented requests to command leadership that he should be “processed via LOD instead of MRR.” He contends he should have been medically retired due to his PTSD and not medically separated via the MRR process which found him NPQ. In support of his contentions, Petitioner provided court documentation, specifically a class action complaint for declaratory and injunctive relief filed in the [REDACTED], contending his situation is analogous. Also, in support of his contentions, he submitted a copy of his Department of Veterans Affairs (VA) benefits letter and portions of PEB documentation. See enclosure (1).

g. In order to assist the Board in reaching a decision, PERS-95 provided the Advisory Opinion (AO) at enclosure (2). The AO explained the nature of the MRR process; explaining that the program determines suitability for continued service for conditions that are not deemed to be in the line of duty and therefore do not confer disability benefits. BUMED makes a retention recommendation and forwards the recommendation to PERS-95 for adjudication. The AO further explained the PEB, as a collateral duty, reviews service members’ appeals of MRR findings but is constrained only to concur or non-concur with the BUMED decision. That is, it only determines if the service member is physically qualified or NPQ to continue naval service. The AO explained that at the time of Petitioner’s MRR adjudication, there was no path for a

¹ MRR determines suitability for continued service for conditions that are not deemed to be in the line of duty and therefore do not confer disability benefits. The Navy Bureau of Medicine and Surgery (BUMED) makes a retention recommendation that is forwarded to Navy Personnel Command (PERS 95) for adjudication. In the case of a MRR, the reservist may appeal the BUMED retention recommendation to the Physical Evaluation Board (PEB). The PEB, as a collateral duty, reviews reservists’ appeal of MRR findings of NPQ.

² Petitioner’s MRR package was not included in his naval record or available to the Board.

³ Petitioner’s PEB documentation was not included in his naval record or available to the Board. However, Petitioner submitted portions of the documentation for the Board’s consideration.

⁴ Petitioner’s PEB documentation was not included in his naval record or available to the Board. However, Petitioner submitted portions of the documentation for the Board’s consideration.

⁵ Per enclosure (2), an Advisory Opinion (AO) provided by PERS-95, the package was received at PERS-95 but never adjudicated. “Based on notes found in the medical reporting system, it appears the command had questions about whether to proceed with the MRR or the LOD, and the PERS-95 case manager advised them to move forward with the MRR.”

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Reservist to go to the PEB for injuries that occurred while in the Active Component but, subsequent to 6 November 2021, policies and responsibilities for a Line of Duty for Benefits (LOD-B) for Disability Evaluation System (DES) program were established. The AO opined that, had the LOD-B for DES program been in effect at the time of Petitioner's MRR decision, Petitioner would have had the option to submit an LOD-B for DES package for PTSD to PERS-95 for adjudication. The PERS-95 AO also discussed the Line of Duty Healthcare (LOD-HC) program that was in effect at the time of Petitioner's MRR. Petitioner's command submitted a LOD-HC request but the package received at PERS-95 was never adjudicated.

h. In its AO, PERS-95 recognized an injustice was done in that Petitioner was never properly reviewed for LOD-HC benefits. The AO opined that if he had been approved for LOD-HC, he would have received medical care under TRICARE insurance and potentially care from a military provider⁶ which may possibly have resulted in referral to the DES. To rectify this injustice, PERS-95 recommended Petitioner's full VA and DoD medical file be provided to the PEB for adjudication of fitness for continued service; primarily utilizing the medical data that was available up to the date of the LOD-HC submission in July 2019. Further, if the PEB determines Petitioner would have been found unfit due to the facts at the time, the AO noted the PEB should provide that determination to PERS-95 as an official finding and PERS-95 will process accordingly.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board concluded Petitioner is entitled to partial relief.

Relying on the PERS-95 AO, the Board concurred with the course of action set forth within the AO based on its determination an injustice exists within Petitioner's record. Thus, the Board determined it is appropriate that Petitioner be referred to, and reviewed by, the PEB as described within the AO.

However, the Board determined insufficient evidence exists to support Petitioner's placement on the disability retired list. The Board is cognizant of Petitioner's arguments for his separation via MRR due to PTSD to be converted to a disability retirement. However, the Board's mandate is to provide full and fair relief upon the discovery of material errors or injustices in naval records⁷.

⁶ The AO notes that "[p]er multiple [Department of Defense (DoD)] and BUMED instructions, referral to the DES must be directed by a military provider, which often occurs as the result of months of treatment." Petitioner received medical care from the VA, not a military provider, so there was no opportunity for referral to the DES.

⁷ The Board is not empowered or qualified to make LOD determinations for purposes of determining eligibility for medical disability benefits. For members of the Reserve Component of the Navy, that function was assigned to the Chief of Naval Personnel (CNP) by the Secretary of the Navy (SECNAV) pursuant to reference (c). Therefore, for Petitioner to request the Board to determine whether he is entitled to a medical retirement is assuming the Board has a responsibility which it is not empowered or qualified to perform. That function is assigned to the Department of the Navy (DON) PEB by the SECNAV in reference (c). The statutory and regulatory function of this Board is to "consider applications properly before it for the purpose of determining the existence of error or injustice in the naval records of current and former members of the Navy and Marine Corps, to make recommendations to the Secretary or to take corrective action on the Secretary's behalf." See references (a) and (d). While the SECNAV, acting through this Board, is empowered to correct a naval record in any way deemed necessary consistent with the

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The Board found that the specific relief requested by Petitioner may be full, but it would not be fair. Accordingly, the Board determined referral to the DES, for an actual disability evaluation, to be the only means of effectively determining whether placement on the Permanent Disability Retired List is warranted.

While the Board acknowledges Petitioner was found to be unfit for continued Reserve service as a result of the MRR findings, this "fitness determination" was not based upon or informed by the same inputs as is required for a fitness determination purpose by the DES. Rather, the finding of unfitness in Petitioner's case was essentially just a verification of BUMED's purely medical recommendation for continued Reserve service and fitness is not solely a medical question.

Next, in the absence of any analysis of what condition contributed to Petitioner's unfitness, there is no way for this Board to calculate the appropriate disability rating. There was also no analysis regarding the stability of the condition which should be so referred. To grant Petitioner medical disability benefits based upon a "fitness determination" made under these circumstances would be to provide Petitioner a windfall benefit which is afforded to no other Sailor. Accordingly, the Board believed Petitioner's unfitness has not been conclusively established for purposes of establishing his eligibility for medical disability benefits. For this reason, the Board found that the only fair way to resolve the injustice identified above is to process Petitioner through the DES for an actual disability evaluation.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action be taken on Petitioner's naval record.

That PERS-95 provide Petitioner an LOD-B letter for PTSD.

That PERS-95 approve Petitioner for the LOD-B for DES program for PTSD pursuant to reference (e). As such, PERS-95 shall direct a Medical Evaluation Board (MEB) via the PEB Liaison Officer, with immediate referral to the PEB upon completion of the MEB recommendation. The DES should assess Petitioner's fitness as it existed at the time of his discharge from the U.S. Navy Reserve.

That Petitioner's naval record be corrected as necessary to implement the outcome of the disability evaluation to be conducted pursuant to this corrective action.

law to correct an error or injustice, to include directing the issuance of an LOD-B letter or making the corrections necessary to retroactively establish a former member's eligibility for medical disability benefits if necessary to correct an error or remove an injustice, this Board is neither authorized nor qualified to perform the functions assigned by the SECNAV to the CNP and DON PEB respectively. By identifying and/or correcting errors or injustices in a naval record, this Board may reach the same end result for an applicant as would otherwise have resulted from favorable determinations by CNP and/or the DON PEB, but it would arrive at that result through an entirely separate and distinct statutory and regulatory scheme which neither contemplates or authorizes LOD or fitness determinations.

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In the event Petitioner is found fit through the DES process, or found unfit with a combined disability of less than 30 percent, no changes shall be made to his naval record.

In the event the DES process results in a correction to Petitioner's naval record (i.e., he is found unfit with a combined disability rating of 30 percent or greater), all records pertaining to Petitioner's MRR process and NPQ-RNR determination shall be removed from Petitioner's naval record. Further, the effective date of his placement on the PDRL shall be the same date that he was previously separated.

If the results of the DES process require correction to Petitioner's naval record, his corrected naval records and this decision shall be forwarded to the Defense Finance and Accounting Service to determine what, if any, back pay, allowances, and benefits may be due Petitioner as a result of this corrective action.

That no further changes be made to Petitioner's naval record.

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 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.

2/27/2025

