



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

█
Docket No. 1519-25
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) Official Military Personnel File

Encl: (1) DD Form 149 w/attachments
(2) Department of the Navy Physical Evaluation Board, ltr █
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(3) Director, Department of the Navy Council, █
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(4) █, Response to the Advisory Opinion, undated

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 a change in his discharge status to reflect that he received a medical discharge and permanent disability retirement due to the aggravation of his back condition during naval service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 25 February 2026 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 references, enclosures, relevant portions of naval records, and applicable statutes, regulations and policies, to include the enclosures (2) and (3), the advisory opinion (AO) prepared by the Department of the Navy Physical Evaluation Board (PEB) and endorsement by the Director, Department of the Navy Council of Review Boards (CORB).

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.

b. A review of Petitioner's reference (b) reveals he enlisted in the Marine Corps as a percussionist and commenced active duty on 27 March 2000. Petitioner averred that in March 2002, he was engaging in Marine Corps Martial Arts Program (MCMAP) training and hit the ground and hurt his back. He asserted that he then went to a Navy doctor who performed an osteopathic manipulation, which injured him more and he was rushed to the emergency room,

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where, he avers, a CT scan showed that his spinal curvature had progressed from 10 degrees, as discovered during MEPS, to 28 degrees, which he argued is greater than could be expected from the natural progression of scoliosis.

c. In November 2002, Petitioner received two page 11 entries: one for failing to meet body composition standards and a second for having received nonjudicial punishment for drunk and disorderly conduct in 2001 and unauthorized absence in October 2002.

d. While he was in service, Petitioner was referred into the Disability Evaluation System (DES) for evaluation of his fitness. In connection with his review within the DES, his command prepared a non-medical assessment discussing his ability to perform his duties, explaining that he was working out of his specialty because, due to his medical condition, he was precluded from standing with a drum harness on for extended periods of time. While in the DES, he was reviewed by a Medical Evaluation Board (MEB), which prepared a report dated 26 March 2003 stating Petitioner "passed his MEPS physical, when it was noted that he had scoliosis in the thoracic region, but it was measured at 10 degrees to the right only. The patient denied any trouble with his back prior to that and admitted to having been told when he was a child, that he did have a curvature of his spine." The MEB reported its final diagnoses of Petitioner as: (1) Congenital Thoracic Scoliosis, Primary Curve Dextra, Twenty Eight to Thirty Degrees, Associated with Fused Left Fifth and Sixth Ribs, Existing Prior to Entry, (2) Scheuermann's Kyphosis from Thoracic Eleven to Lumbar One, Existing Prior to Entry, and Overweight Condition, Secondary to Deconditioning, Associated with his Symptomatic Back Problem, Did Not Exist Prior to Entry. The MEB further reported: "It is the opinion of the Orthopaedic Staff that this member's medical condition interferes with the reasonable performance of his assigned duties and on that basis this case is referred to the Physical Evaluation Board for fitness for duty determination." The MEB did not find any other potentially unfitting conditions that should be referred for review by the PEB.

e. On 22 April 2003, an Informal PEB (IPEB) found Petitioner to be unfit due to the following conditions, which it found existed prior to entry in service: 1. Congenital Thoracic Scoliosis, and (2) Scheuerman's Kyphosis. On 30 April 2003, Petitioner executed his election of options (EOO), in which he indicated he accepted the findings of the IPEB. On 1 May 2003, President, PEB, informed the Commandant of the Marine Corps that Petitioner was found unfit due to a condition that existed prior to entry. Thereafter, Petitioner was discharged, on 15 June 2003, with an honorable characterization of service due to a disability that existed prior to entry.

f. In his petition, Petitioner requested a change in his discharge status to reflect that he received a medical discharge and permanent disability retirement due to the aggravation of his back condition during naval service. In support of his request, he asserted that his back condition was aggravated in service to the point where he was unable to perform his duties and he should have properly been discharged with a medical discharge. Specifically, Petitioner argued that he joined the Marine Corps with asymptomatic minor spinal scoliosis, and that, after two years of successfully performing his duties as a Marine, his scoliosis was aggravated due to his participation in mandatory martial arts training and due to a spinal manipulation performed by a Navy doctor. As a consequence, according to Petitioner, he started to suffer debilitating pain, weakness, and numbness, which made it impossible for him to perform his duties as a Marine.

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He also argued that the IPEB ignored the evidence and concluded he should not be medically retired because his scoliosis existed before service and was not aggravated during his time in the Marine Corps. Petitioner provided post-service findings by the Department of Veterans Affairs (VA) relating to his back condition and other medical records, all of which were considered by the PEB in formulating its AO.

g. In order to assist it in considering Petitioner's application, the Board sought the enclosure (2), which was considered partially favorable to Petitioner's request. The AO explained that after a review of all relevant material, including all of the material submitted by Petitioner, the PEB found that it agreed with the IPEB's original decision in Petitioner's case, especially considering the evidence and guidance available at the time. However, according to the AO, "more recent medical research now challenges the weight of certain evidence that the original IPEB relied upon." Thus, the AO explained, after it reassessed evidence, it concluded that the condition "Existed Prior to Service, Service Aggravated" applies, and it assigns a 10% rating and recommended separation with severance pay.

h. In reaching its decision, the AO explained that the original IPEB was tasked with determining whether the preponderance of the evidence clearly demonstrated that Petitioner's condition was following its natural progression without permanent aggravation due to military service. In other words, while some evidence suggested possible service aggravation, the majority of evidence supported the conclusion that the condition was following its natural progression. The AO went into detail supporting this finding, explaining, with footnotes omitted:

Records indicate that the Petitioner's condition is currently rated by the VA under code 5242 Degenerative Arthritis of the Spine. Although his current rating of 40% was commensurate with his back range of motion in 2023, his report of pain and range of motion based on in service records and the most contemporaneous measurements following discharge are consistent with a rating of 10% based on "forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees" or "combined range of motion of the cervical spine greater than 120 degrees but not greater than 235 degrees." Consequently, if his case was adjudicated today under the provisions of references (c) and (d), the Petitioner would have been found unfit for SCHEUERMANN'S KYPHOSIS FROM THORACIC ELEVEN TO LUMBAR ONE WITH CONGENITAL THORACIC SCOLIOSIS, PRIMARY CURVE DEXTRA, TWENTY EIGHT TO THIRTY DEGREES, ASSOCIATED WITH FUSED LEFT FIFTH AND SIXTH RIBS, VA Code 5242 at 10% and separated from service with severance pay.

i. The AO concluded, with footnotes omitted, "it is the opinion of the Board that the IPEB's original adjudication was appropriate given the IPEB's implied assessment of the credibility of the evidence, the contemporary body of medical knowledge, and the prevailing legal guidance regarding service aggravation determination. However, in light of subsequent medical research, the totality of the evidence would no longer meet the legal burden required to overcome the presumption of service aggravation. Were the IPEB to adjudicate the Petitioner's case with current medical knowledge, it would have found the member's condition to be Existed Prior to

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Service, Service Aggravated, irrespective of the change in interpretation in reference (e). In the event the Petitioner's condition is found compensable, the most appropriate result per references (a), (b), (c), and (d) and enclosure (3) would be a rating of 10% under VA Code 5242 and separation from the service with severance pay, not medical retirement."

j. The AO was reviewed by Director, CORB, who provided a positive endorsement of the AO. According to the Director, CORB, "[a]fter a thorough review of the advisory opinion (including enclosures), and BCNR file, I concur that while the IPEB's original adjudication was reasonable, recent medical research and evidence now suggest the condition meets the criteria for 'Existed Prior to Service, Service Aggravated.'"

k. The AO was provided to Petitioner for his review and response. Petitioner provided a response to the AO, which was received by the Board on 17 February 2026. In his response, Petitioner did not appear to challenge the finding of the AO with respect to its opinion concerning his back condition. Rather, Petitioner asserted that the Board should add new conditions to Petitioner's unfit findings, including headaches and migraines, a right shoulder condition, and lower extremity radiculopathy. Petitioner also asserted that the Board should enhance his unfit finding by adding a provision for pain that he suffers.

CONCLUSION:

In its review of the entirety of the available documentation, the Board determined that there was an error in Petitioner's naval record as set forth in the AO. In reaching its decision, the Board observed that the nature of Petitioner's application necessitated specialized knowledge, for which it obtained from enclosure (2). The Board substantially concurred with the AO, finding it to be reasonable and based on substantial facts. The Board was not persuaded to add additional unfitting conditions to Petitioner's unfitting findings as urged by Petitioner. Upon review of the Petitioner's response to the AO, the Board observed that Petitioner failed provide sufficient evidence that there was an error or an injustice in the fact that these conditions were not reviewed while Petitioner was in service by Petitioner's MEB or his subsequent IPEB. Further, the Board found insufficient evidence that these conditions were considered to be potentially unfitting while Petitioner was in service, noting that the non-medical assessment provided by Petitioner's command did not address these conditions, nor, as mentioned, were they referred to the MEB. Finally, with respect to Petitioner's reliance upon post-service findings by the VA granting him service connection for a variety of conditions, the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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 determined the following partial relief will be taken.

RECOMMENDATION:

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

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That Petitioner's naval records reflect that upon separation he was UNFIT for SCHEUERMANN'S KYPHOSIS FROM THORACIC ELEVEN TO LUMBAR ONE WITH CONGENITAL THORACIC SCOLIOSIS, PRIMARY CURVE DEXTRA, TWENTY EIGHT TO THIRTY DEGREES, ASSOCIATED WITH FUSED LEFT FIFTH AND SIXTH RIBS, VA Code 5242 at 10%.

That Petitioner's unfitting rating was 10% and he was separated with severance pay.

That Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) be corrected as follows: narrative reason for separation: Disability – Severance, separation program designator, as appropriate. Note: Headquarters, U.S. Marine Corps 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 audit the Petitioner's pay account to determine amounts due, if any.

That a copy of this decision be placed in Petitioner's OMPF.

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.

3/20/2026

