



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

██████████
Docket No. 3573-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,
XXX-XX-██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) Petitioner's Official Military Personnel File

Encl: (1) DD Form 149 w/attachments
(2) Physician Advisor, Board for Correction of Naval Records, ltr NR20240003573 of
14 January 2026

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, hereinafter referred to as the Board, requesting reconsideration of his prior denied petition that his naval record be corrected to reflect he was transferred from the Temporary Disability Retirement List (TDRL) to the Permanent Disability Retirement List (PDRL) at a 40% disability rating under VASRD code 5299- 5293 (Intervertebral Disc Syndrome with radiculopathy and limited range of motion) for which he was originally placed on the TDRL vice VASRD code 5290 (Limitation of motion of the cervical spine) for which he was Separated with Severance Pay from the TDRL.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 28 January 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 enclosures, relevant portions of naval records, and applicable statutes, regulations, and policies. The Board also considered the enclosure (2) advisory opinion (AO) from a qualified medical professional, which was considered favorable to Petitioner.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. A review of reference (b) reveals that Petitioner enlisted in the Navy and commenced active duty on 16 March 1995. During his service, Petitioner was reviewed by a Medical Evaluation Board (MEB) on 17 September 1997. The MEB diagnosed Petitioner with Cervical Spondylosis and recommended that he be reviewed by the Physical Evaluation Board (PEB). On 24 November 1997, an Informal Physical Evaluation Board (IPEB) found Petitioner to be unfit

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due to Cervical Spondylosis (VASRD 5299) with a 40% disability rating and recommended that he be placed on the temporary disabled retired list (TDRL). Thereafter, he was released from active duty, effective 12 January 1998, and placed on the TDRL. On 29 August 2002, the President, PEB, informed Chief of Naval Personnel that Petitioner had been found unfit at 20% disability rating and that he should be separated from the TDRL with severance pay. On 12 September 2002, Petitioner was removed from the TDRL and separated with severance.

c. In 2023, Petitioner filed his initial petition with the Board. In order to assist it in reaching a decision, the Board obtained an AO from a qualified medical professional. That AO was considered unfavorable to Petitioner's request. The Board considered the unfavorable, along with Petitioner's rebuttal to the AO, and ultimately denied Petitioner's requested relief. Inasmuch as the Petitioner's request turned, in large part, on specialized medical knowledge and application of the VA Schedule for Rating Disabilities (VASRD), the Board concurred substantially with the findings of the AO and denied relief, informing Petitioner of its denial by letter dated 14 April 2024. Subsequently, Petitioner filed this request for reconsideration.

d. In his application for reconsideration, Petitioner requested that his naval record be corrected to reflect he was transferred from the Temporary Disability Retirement List (TDRL) to the Permanent Disability Retirement List (PDRL) at a 40% disability rating under VASRD code 5299- 5293 (Intervertebral Disc Syndrome with radiculopathy and limited range of motion) for which he was originally placed on the TDRL vice VASRD code 5290 (Limitation of motion of the cervical spine). In support of his request for reconsideration, as new matter, Petitioner provided the opinions of four orthopedic specialists. Petitioner argued that the previous Board denial did not appear to recognize that the reason for the decrease in percentage was not because Petitioner's condition had improved but because the VASRD code was changed from 5299-5293, under which Petitioner's symptoms warranted a 40% rating, to VASRD 5290, under which Petitioner's limited range of motion was deemed to warrant a 20% rating. Thus, according to Petitioner, the evidence and arguments establish that the IPEB erred in reclassifying Petitioner's disability from VASRD code 5299-5293 to 5290, which subsequently led to the reduction in disability percentage. He contended that his records should be corrected to show he was placed on the PDRL with a 40% rating under VASRD code 5299-5293, with corresponding disability pay.

e. In order to address the technical issues involved in Petitioner's request for reconsideration, the Board obtained the enclosure (2). Having reviewed the new matter provided by Petitioner, the AO explained:

Petitioner provides newly provided medical documentation in the form of four letters from orthopedic specialists. Petitioner argues that the previous BCNR denial did not appear to recognize that the reason for the decrease in percentage was not because Petitioner's condition had improved but because the VASRD code was changed from 5299-5293, under which Petitioner's symptoms warranted a 40% rating, to VASRD 5290, under which Petitioner's limited range of motion was deemed to warrant a 20% rating. Thus, according to Petitioner, the evidence and arguments establish that the IPEB member erred in reclassifying Petitioner's disability from VASRD code 5299-5293 to 5290, which subsequently led to the reduction in disability percentage, and that his records should be corrected to show

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he was placed on the PDRL with a 40% rating under VASRD code 5299-5293, with corresponding disability pay.

* * *

VASRD Diagnostic Code 5290 relates primarily to the rating of limitation of motion of the cervical spine (neck), under the older rating system, assigning 10% for slight, 20% for moderate, and 30% for severe limitation, often alongside conditions like degenerative disc disease or arthritis, with ratings determined by specific range of motion measurements and symptoms like pain or muscle spasms. This code is now generally superseded by newer codes like 5235-5243 for spinal conditions but was key in earlier evaluations.

While VASRD Diagnostic Code 5290 is largely historical, the principles of rating spinal conditions based on range of motion and symptoms (pain, spasm, nerve involvement) remain, now often using codes 5235-5243 or others. In essence, DC 5290 was the VA's way to quantify how much your neck couldn't move due to injury or disease, impacting your disability compensation. The use of DC 5290 inadequately described Petitioner's debilitating symptoms stemming from his chronically herniated cervical discs, which is more accurately rated under VASRD diagnostic codes 5299-5293, Cervical Spondylosis (Intervertebral Disc Syndrome).

f. 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 from the TDRL he was unfit for continued military service and should have been transferred to the PDRL under his original unfitting VA Diagnostic Code of 5299-5293 for Cervical Spondylosis at his original disability rating of 40%."

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 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 the newly provided evidence and arguments. The Board acknowledged the analysis of Petitioner's rating is a technical matter and it found that the AO provided a convincing analysis of Petitioner's condition and opinion on the application of the VASRD to such condition.

RECOMMENDATION:

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

That Petitioner be placed on the PDRL as unfit, effective 12 September 2002, for the following condition:

1. Cervical Spondylosis, VA Code 5299-5293, rated at 40%, permanent and stable, not combat related (NCR), non-combat zone (NCZ).

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This results in a combined rating of 40%.

The DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's discharge with severance and any lawful monies owed.

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.

2/21/2026

