



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

Docket No. 8464-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

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

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) Findings (Reconsideration) of the Physical Evaluation Board Proceedings, 10 Jun 10
(4) Disability Evaluation System Proposed Rating re: [Petitioner], 24 May 10
(5) President, Physical Evaluation Board ltr 1850 10R:111 PEB Index M21000356, subj: Notification of Decision, 29 Jun 10

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 her naval records changed to reflect her permanent disability retirement, made effective as of her date of discharge.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error or injustice on 13 May 2026. The Board, pursuant to its regulations and on the basis of the available evidence of record, determined that the corrective action indicated below should be taken with respect to Petitioner's request. Documentary material considered by the Board consisted of Petitioner's application, all materials 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 law and regulations applicable to 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, on 22 May 1995, Petitioner commenced active duty in the U.S. Marine Corps. See enclosure (2).

c. On 10 June 2010, the Department of the Navy Physical Evaluation Board (PEB) found Petitioner unfit for continued military service due to traumatic brain injury (TBI) (Department of Veterans Affairs (VA) Diagnostic Code (DC) 8045, at a disability rating of 10%). The PEB

further found that Petitioner's unfitting TBI "was the direct result of a combat-related injury" and "was incurred in the line of duty as a direct result of armed conflict." See enclosure (3).

d. With respect to Petitioner, the PEB also identified the following disabilities as "related Category 2" diagnoses: (1) cognitive impairment; (2) organic sleep abnormality; (3) tinnitus; (4) migraine headaches, exacerbated by TBI; and (5) post-traumatic migraine-associated dizziness. See enclosure (3).

e. Under policies applicable at the time, "Category 2" diagnoses were disabilities that the PEB determined to contribute to a service member's unfitness, but which were not primarily or separately unfitting.

f. On 24 May 2010, in connection with Petitioner's Integrated Disability Evaluation System (IDES) process, the VA rated Petitioner for the following service-connected disabilities, among others: (1) "traumatic brain injury (claimed as traumatic brain injury with cognitive disorder, cognitive impairment, memory loss)," under VA DC 8045 at a 10% disability rating; (2) "migraine headaches (also claimed as migraine headaches, daily with meds, post-traumatic migraine-associated dizziness, and dizziness)," under VA DC 8100 at a 30% disability rating; (3) "depression, NOS (claimed as organic sleep abnormality)," under VA DC 9434 at a 30% disability rating; and (4) "tinnitus," under VA DC 6260 at a 10% disability rating. See enclosure (4).

g. On 29 June 2010, the PEB requested that Petitioner be separated with severance from the Marine Corps due to her unfitting disability associated with VA DC 8045 (TBI) at a 10% disability rating. The PEB identified Petitioner's unfitting disability as being combat-related and having been incurred in a combat zone. Disability ratings associated with Petitioner's "Category 2" diagnoses were not incorporated into Petitioner's unfitting disability rating. See enclosure (5).

h. On 30 October 2010, Petitioner was separated with severance from the Marine Corps. See enclosure (2).

i. In 2023, the U.S. Court of Appeals for the District of Columbia determined that federal law governing the PEB requires that disabilities that the PEB finds to "contribute" to a service member's unfitness must be rated by the VA, and those ratings must be applied to the service member's PEB finding of unfitness. See *Sissel v. Wormuth*, 77 F.4th 941 (D.C. Cir. 2023).

j. In support of her request, Petitioner contends that she suffered from TBI due to successive blast exposures and a head injury during Marine Corps Martial Arts Program training. She contends that her TBI caused cognitive and memory issues, which, in concert with a lack of counsel, made it difficult for her to navigate the Disability Evaluation System (DES) and ensure that her conditions were comprehensively evaluated by the PEB. She therefore contends she was erroneously separated with severance for disability, instead of receiving a disability retirement. See enclosure (1).

CONCLUSION:

In its review of the entirety of Petitioner's application file as described above, the Board determined that there was an injustice in Petitioner's naval record with respect to her separation from service. Instead, Petitioner should have been placed on PDRL at her date of discharge.

In reaching its decision, the Board observed that the PEB found that Petitioner suffered from six conditions that collectively rendered her unfit for service—one "Category 1" primarily unfitting condition (TBI) and five "Category 2" contributing conditions (cognitive impairment; organic sleep abnormality; tinnitus; migraine headaches, exacerbated by TBI; and post-traumatic migraine-associated dizziness). The VA rated these six conditions under four separate diagnostic codes (with some codes incorporating multiple disabling symptoms): (1) DC 8045 (TBI) at 10%; DC 9434 (organic sleep abnormality/depression) at 30%; DC 6260 (tinnitus) at 10%; and DC 8100 (migraines and dizziness) at 30%.

Consistent with Department of the Navy policy at the time of Petitioner's discharge, the PEB published a finding incorporating only Petitioner's "Category 1" diagnosis (TBI under VA DC 8045) and its VA-assigned 10% disability rating. Petitioner accepted that finding, and she was separated with severance, a disposition consistent with a 10% disability rating.

However, the Board considered whether Petitioner's disability separation, carried out consistent with then-applicable Department of the Navy policy, nevertheless required correction in light of the U.S. Court of Appeals decision in *Sissel v. Wormuth* in 2023. And here, because the PEB formally determined that the above-described conditions contributed to Petitioner's unfitness, and were thus collectively unfitting, the Board determined, in the interest of justice, that the four VA DCs and disability ratings associated those conditions should have been incorporated into Petitioner's PEB finding. Had that occurred, Petitioner would have been placed on the Permanent Disability Retired List (PDRL) on her date of discharge at a combined disability rating of 60%, instead of being separated with severance.

RECOMMENDATION:

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

Correct Petitioner's record by placing her on PDRL as of her date of discharge, on account of the following unfitting conditions:

<u>Condition 1:</u>	Traumatic Brain Injury (claimed as Traumatic Brain Injury with Cognitive Disorder, Cognitive Impairment) (CR (AC), CZ)
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VA Diagnostic Code: 8045

Disability Rating: 10%

<u>Condition 2:</u>	Depression, NOS (claimed as Organic Sleep Abnormality) (NCR, NCZ)
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VA Diagnostic Code: 9434

Disability Rating: 30%

Condition 3: Tinnitus (NCR, NCZ)

VA Diagnostic Code: 6260

Disability Rating: 10%

Condition 4: Migraine Headaches (claimed as Migraine Headaches, Daily with Meds, Post-Traumatic Migraine-Associated Dizziness, and Dizziness) (NCR, NCZ)

VA Diagnostic Code: 8100

Disability Rating: 30%

Combined Rating: 60%

Defense Finance & Accounting Service will complete an audit of Petitioner's pay records to determine amounts due, if any.

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.

6/3/2026

