



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

JRE

Docket No. 8367-13

28 January 2015

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record
(3) Director, CORB ltr 5220 CORB:002, 1 Dec 14

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he was retired by reason of physical disability, vice released from active duty at the expiration of his active duty service commitment.
2. The Board, consisting of Messrs. Hicks, Spooner and Swarens reviewed Petitioner's allegations of error and injustice on 15 January 2015 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, 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, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although the application was not filed in a timely manner the Board finds it in the interest of justice to consider the application on the

merits.

b. Petitioner enlisted in the Marine Corps on 10 December 2001. On 4 April 2004, while serving as an infantryman in Operation Iraqi Freedom, he sustained multiple shrapnel wounds and other injuries from the explosion of an improvised explosive device. In a letter dated 3 February 2005, the Commandant of the Marine Corps approved the recommendation of a limited duty medical board that Petitioner be retained in a limited duty status for a period not to exceed 8 months, and that if found fit for full duty as a result of reevaluation, that a copy of the medical board cover sheet be submitted to him. Petitioner completed a Report of Medical Assessment (DD Form 2697) on 12 September 2005 in which he listed nerve damage, hip pain, circulation problems from shrapnel, and memory loss as conditions which limited his ability to work in his primary military specialty and/or required geographic or assignment limitations at that time. The assistant regimental surgeon who reviewed that form made entries therein which suggest that although Petitioner was clinically stable, referral to "VA/DOD TBI, Texas VA (already scheduled) Also neuropsych testing & neurologist" was recommended. Petitioner was released from active duty on 9 December 2005 by reason of completion of required active service, and assigned a reentry code of RE-1A, which indicates he was recommended and considered eligible for reenlistment at that time.

c. The Department of Veterans Affairs (VA) awarded Petitioner the following disability ratings effective 10 December 2005: 30% for laceration of the liver with dumping syndrome and history of irritable bowel syndrome; 30% for ulnar nerve laceration and residuals of right (dominant) thumb fracture; 20% for peripheral neuropathy of the left upper extremity; 20% for peripheral neuropathy of the left upper extremity; 20% for reflex sympathetic dystrophy of the left leg; 10% for shrapnel wounds of right hip; 10% for tinnitus; 10% for post-concussive headaches; and 10% for cognitive disorder. In addition, he was granted basic eligibility for Dependents' Educational Assistance from 23 October 2008, based on the determination that he was permanently and totally disabled.

d. In correspondence attached as enclosure (3), the Director, Secretary of the Navy Council of Review Boards opined that the available evidence does not support the granting of Petitioner's request. The Director noted that a normal physical examination was recorded on 3 March 2006, to include muscle strength and neurologic coordination; that Petitioner worked as a foreman for

a roofing company and was a volunteer fire fighter; and that as to his cognitive disorder, he was functioning in the average range of intelligence but likely had mild losses from a previously higher level of functioning. He denied having symptoms of anxiety or depression, and his Global Assessment of Functioning was 70. Other notes reported lifelong difficulty with reading and spelling. The 18 January 2007 report of a VA mental disorders examination indicates he continued to be employed as a roofing foreman and often had several crews for which he was responsible. He enjoyed hunting and fishing and visited his fiancée frequently, and he was interested in establishing a nonprofit corporation to serve the needs of disabled veterans interested in outdoor activities. He had not lost any time from work as a result of cognitive disorder but it was felt that his job performance was perhaps mildly impaired as a result of his memory problems. The Director concluded that although Petitioner had sustained significant injuries on 4 April 2004, which prompted his placement in a limited duty status, it appears that his recovery had progressed to the point where his health care providers determined that referral to the Physical Evaluation Board (PEB) was not warranted. Petitioner's statement and post-separation VA records suggest no significant impairment in civilian occupational pursuits utilizing skills normal to his military occupational specialty as a rifleman, e.g., hunting and fishing, in combination with community service activities, management, and an active social life. In the Director's opinion, had referral to the PEB occurred, a finding of fit for continued naval service would have been determined.

CONCLUSION

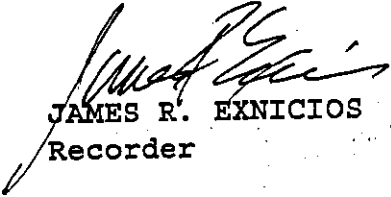
Upon review and consideration of all the evidence of record, and notwithstanding the comments and recommendation contained in enclosure (3), the Board concludes that Petitioner was not fit to perform the duties of his military occupational specialty at the time of separation due to the damage to his right ulnar nerve sustained when he was wounded in Iraq. Contrary to the opinion expressed by the Director, Secretary of the Navy Council of Review Boards, the Board does not believe that Petitioner's ability to engage in hunting and fishing as leisure activities, and to work as a roofing supervisor and volunteer firefighter does not suggest he was capable of performing the duties required of a Marine rifleman. Accordingly, it finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show that he was released from active duty on 9 December 2005 and transferred to the Temporary Disability Retired List the following day with a disability rating of 30 percent under VA Schedule for Rating Disabilities code 5288-8516 for ulnar nerve laceration and right thumb fracture (dominant), and that he be accorded a periodic physical examination as soon as practicable.

b. 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.


JAMES R. EXNICIOS
Recorder

5. The foregoing report of the Board is submitted for your review and action.


ROBERT J. O'NEILL
Executive Director

Reviewed and approved/~~disapproved~~: ^{RFW} 3/16/15


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