

February 28, 2005

Chairman McHugh, Congressman Snyder, distinguished members of the committee. I thank you for the opportunity to appear before this committee and tell my story of what has been a troubling series of events as an injured reservist. I am appearing before you to tell my story and the opinions expressed throughout my testimony are mine and not those of the Department of Defense. I apologize for the length of this written testimony, I have attempted to boil it down, but in cases like this, the devil is in the details and shortcomings of my treatment and care are lost without the details.

I was mobilized on April 10, 2003 for the War on Terrorism from Fort Schuyler, Bronx, New York. I reported to Fort Schuyler on April 23, 2003 to retrieve my orders and on April 24, 2003 I reported in for processing at Camp Telega in Camp Pendleton.

After processing was complete I, with a group of other Naval Corpsman, was assigned to Field Medical Service School (FMSS) at Camp Del Mar (Camp Pendleton) for training where I was awarded the distinct honor of being Fleet Marine Force (FMF) Corpsman, also known as 8404 Corpsman. I graduated this rigorous program on June 6, 2003 and was named the Platoon and Company Guide On, a tradition held high by the Marine Corps given to those personnel worthy enough to carry the colors through all aspects of their training and never let them fall.

On June 7, 2003 I reported to CG I MEF headquarters for further assignment and because of my performance was eventually chosen to work directly for our Commanding Officer (CO) in the 1st Field Service Support Group (FSSG) Headquarters (HQ) Camp Pendleton. I was tasked with a nation wide recovery of Post Deployment Forms from numerous units that deployed from

Camp Pendleton but did not return home through Camp Pendleton. This assignment was slotted for a one-month completion but I completed the task in only 3 days.

From there I was re-assigned to 3rd Marine Air Wing (MAW) Medical HQ and was told to report as soon as possible to Miramar, Marine Corps Air Station (MCAS).

Upon my arrival at Miramar MCAS Medical HQ I was advised I was being sent to Iraq to the Casualty Evacuation (CASEVAC) team, and that I was to assume the position as Lead Petty Officer (LPO) as soon as I arrived in theater. I executed these orders to the best of my ability and without fail until September 11, 2003, when I was injured in a combat training exercise in Al Kūt, Iraq.

After the training accident I was flown to Baghdad by US Army helicopter to the 28th Combat Support Hospital (CSH). Once I was seen at the emergency room (ER) I was diagnosed with a dislocated right shoulder and a right Acromial Clavicular (AC) separation grade 3. The dislocation was reduced in the ER but the AC separation needed surgical repair, this is when the determination was made to fly me to Landshtule Army Hospital in Germany. Late on September 12, 2003 I was flown to Germany by Air Force transport and I arrived in Germany on Saturday September 13, 2003 early in the morning. Everyone that could walk from the transport was taken to the hospital by bus. Once at Landshtule, stable personnel checked in at the hospital and then were driven to the barracks to report back to the hospital on Monday morning. I was seen at orthopedics as directed on September 15, 2003. A Physician Assistant (PA) in orthopedics stated that since I was Navy and stable enough to return to Continental US (CONUS) that I was to return to the barracks and wait further instruction for a transport back to San Diego. Later that day a Marine Staff Sergeant assigned to the hospital as liaison found me in a waiting room. He

stated “c’mon Doc I’m getting you out of here”, he took me to get a \$250.00 clothing chit to use at the PX because I could not return home on a commercial flight in a military flight suit

I returned to San Diego on September 16 2003, and was picked up at the airport by a member of Miramar Medical HQ staff and dropped off at the Bachelor Officer Quarters (BOQ) to wait further instruction. Due to the medication and the nearly impossible task of dressing my self, the next morning I reported to the Acute Care Area (ACA) at Miramar MCAS for help. I was supposed to be taken from the ACA to Naval Medical Center San Diego (NMCS D) by ambulance. The department of orthopedics at NMCS D called the ACA back and wanted me to come by appointment for my injuries on September 23, 2003.

Later the same day I reported back to Miramar Medical Headquarters I was advised to take up quarters at a near by hotel because enlisted personnel could not stay in the BOQ. I was able to obtain quarters at the Embassy Suites right outside Miramar MCAS, and to phone muster with my unit until I was well enough to come in. I was seen at NMCS D orthopedics on September 23, 2003 by another Navy doctor, was examined and given four instructions one of which was that I was able to return to my unit on light duty until my appointment with a different Navy doctor on October 02 2003. I was seen on October 2nd and the doctor reviewed my radiology films and scheduled me for surgery on October 09, 2003. On October 03, 2003 I was notified by my command to report to Miramar Medical Clinic to start filling out the necessary paper work for members returning from Iraq. Now that these steps were completed I returned to my command on a light duty status until my surgery date.

On October 09, 2003 my Fiancé Simone and I arrived to the hospital an hour before surgery as ordered. I went through the standard pre-operative exam and completed the necessary paperwork. I had concerns about NMCS D needing my private health insurance from the New

York City Fire Department for the surgery, but I was advised that anyone having their own insurance must give that information to the hospital for reimbursement to the military. So basically I paid for my own surgery.

Half way through the surgery, the surgeon entered the waiting room to discuss with my fiancé what they had found thus far. He explained to Simone that my injuries were much worse than they expected instead of a grade 3 AC separation he determined it to be a grade 5 and now instead of an hour long procedure it was now going to be three hours. In his conversation with her he stated that it would be necessary to make a temporary move to California because my recovery was going to be lengthy, at least nine months and that I would not be able to care for myself in the months to come. These same statements were explained to me in recovery. It was impressed on me that recovery would take several months and I would need assistance for at least 90 days in showering, getting dressed and other basics.

Directly following my surgery I was placed on thirty days of convalescent (CON) leave authorized by my command. I had one follow-up appointment with the surgeon on October 15, 2003 for a postoperative visit. He advised me that it was ok for me to travel back to New York to be with my fiancé and to visit my children, which I did.

I reported back to my unit (Miramar Medical HQ) on November 12, 2003, to work light duty (the 9th was a Sunday and the 10th and 11th were holidays). On the morning of the 13th my unit received a phone call from a Navy LCDR stating I was to return to Camp Pendleton for de-mobilization. This was a big surprise to me and my unit because I was still injured and in no condition to be de-mobilized...my belongings had not even been returned from Iraq. The navy LCDR stated again that I was to get to Camp Pendleton before noon.

I reported as instructed to Camp Pendleton with no records or orders, just myself. I was expedited through the de-mobilization process and handed a set of orders that said I was to begin de-mobilization by December 01, 2003. When I asked “why the rush” to de-mobilize me, when my orders said I needed to start the process by December 1st, I was told it didn’t matter “you have to be checked out today and report to Naval Mobilization Processing Site (NMPS) San Diego”. I reported that I was just recovering from surgery, and again was told “you have to report to NMPS”, so I did. About 1600 hours I reported to NMPS where I met with a chief. I told her what had happened to me that day. The Chief told me I would be taken care of and not to worry about my stuff left in Iraq, that everything would work itself out. The Chief told me to return on Monday November 17, 2003 to start my paperwork.

The Chief asked if I was situated in the barracks, I explained that at the hospital I was advised to make a temporary move to California. The Chief stated that the hospital should have never told me to do that, and if they did, did they authorize a PCS move for me. I told the Chief I made the move at my own expense from Manhattan to Oceanside, right outside Camp Pendleton. I was then asked why outside Camp Pendleton; I replied “My doctor has me set up for physical therapy at Naval Hospital Camp Pendleton (NHCP)”. I was advised again to show up on Monday and report to NMPS medical to begin my processing.

On November 17, 2003 I was at medical as ordered. Again, I started more paperwork to complete my de-mobilization. A Chief Petty Officer had me complete the form to be forwarded to Washington that a Medical Officer would use to decide if I was to remain on active duty. I was also seen by another Navy doctor that day and I explained everything that has happened to me, and that I worked for the New York City Fire Department and that in no way was I able to return to my civilian employer in my current medical condition. At this point, I had become very

concerned that I would be forced back to civilian life having not gotten the treatment that would allow me to perform my job at the FDNY. The Doctor told me not to panic at this point.

On November 18, 2003 I received a phone call from the Chief NMPS Medical advising me to be at medical first thing in the morning on November 19th. When I arrived the Chief handed me an e-mail from the Senior Medical Officer (SMO) of Bureau of Personnel (BUPERS) stating I was fit to demobilize and return to the reserves for further mobilization. Now I was panic stricken. In the meantime, a Navy Doctor emerged from his office and assured me that he had been on the phone with the SMO at BUPERS and that I was to remain on active duty for physical therapy.

Later that day the Chief advised me that I would have to cancel all of my future appointments for physical therapy (P/T) at NHCP and start my P/T at Branch Medical Clinic (BMC) Naval Station (NAVSTA) San Diego. This was significant, as the P/T facility at Camp Pendleton was better suited for my recovery. On November 20, 2003 I reported in to the NMPS office to advise them that I was remaining on active duty to care for my injuries. I then had a meeting with Distribution Clerk about my pay. I was made aware that I would not be receiving the same per-diem rate of pay that I was receiving with the Marines. I explained that I was issued a detaching endorsement by the Marines beginning the day I left to the day I report back to Fort Schuyler, Bronx New York, which entitled me to higher a per diem rate. I was advised to attach this endorsement with my travel claims and forward them to his desk for liquidation. The clerk then quickly stated "before you hand in your paperwork let me look into it first". I thought his issue was resolved on March 13, 2004 when I handed in my travel claims for the last four months. This was the beginning of a pay problem that has contributed to an already difficult and stressful situation.

My first appointment with a Physical Therapist was on November 21, 2003. I was assigned to complete three appointments a week at the BMC P/T office, which I did. I saw the Physical Therapist once a month until March 17, 2004 where I was then instructed not to report to the P/T office any longer, that I was to do the P/T exercises on my own three times a week as I was taught to do.

On November 24, 2003 I reported to the Health Promotions Office BMC San Diego to work light duty as instructed and that I would report to a Chief at the BMC. In this office I was assigned to give required classes to naval units assigned to NAVSTA San Diego. The Chief would normally have me teach in the morning and release me after lunch for the rest of the day, when I asked about the abbreviated work hours, he stated that in his research he found an instruction that stated members of the service on medical hold (MEDHOLD) only had to report for muster at 0800 and 1300 hours and that the rest of the day a MEDHOLD was to care for their injuries. He knew this because he was on MEDHOLD himself. When I brought this information to the attention of the NMPS medical chief, he notified me that this NMPS San Diego has their MEDHOLD personnel work light duty to keep an eye on them. He stated it was an accountability issue. This information was in conflict with information I received earlier.

On December 12, 2003 my surgeon had the medical board office at NMCS D place me on limited duty orders (LIMDU). LIMDU status ensures many medical benefits and I was happy these orders were provided to me, as they would have helped ensure my recovery. I returned these orders to the medical department at NMPS; it was there I was notified that reservists are not afforded LIMDU. I told them they were in contradiction to SECNAVINST 1850.4E regarding limited duty. The Chief repeated himself; reservists are not afforded LIMDU orders. The Chief went on to explain that injured reservist are placed on MEDHOLD and have to be

extended on active duty every four to six weeks. I personally have not found any SECNAVINST that states this. If reservists are not afforded the same protections of LIMDU as active duty sailors...they should be and this is a rule that Congress should work to change.

In the month of December I started getting bad headaches, I had one or two headaches prior to December but nothing like what I was experiencing now. I would use over the counter medications to try to get the pounding to stop. My P/T was moving along and I was gaining ground on my range of motion (ROM). Also in this month I noticed that I was starting to gain weight and on January 20, 2004 I brought this to my surgeon's attention. He stated not to worry so much about the weight gain, which was a mixture of no physical training and the medications and that when I'm done with all this I can worry about it

In the month of January 2004 I started working light duty in the BMC Acute Care Area (ACA). My new work assignment came on the heels of a reserve advocate holding my case out as a case of a reservist getting unfair treatment after an injury at a hearing before the House Armed Services Committee. Although my name was not used in the hearing I am the only New York City Fire Department employee currently assigned to NMPS San Diego and therefore it was not hard to figure out who the advocate was talking about. Although my command said I was moved to a new duty assignment so they could keep an eye on me because I missed a muster, it was becoming clear that my insistence that I be made medically able to return to my civilian job was becoming an annoyance to my command. This situation eventually resulted in my being punished with Extra Military Instruction. I believe I was targeted for retaliation because I was vocal about my concerns regarding my health. Later that week I received a phone call from the reserve advocate who raised my case at the previous hearing. She apologized to me for what I was going through and told me what was happening had the appearance of retribution.

Moving on, in the months to follow my P/T was going well. The headaches though were becoming more frequent. On March 02, 2004 I had notified one of the doctors in the ACA about these headaches, he stated that I was describing migraine headaches and prescribed me Imitrex. This medication did make a world of difference.

Through the months of February and March unbeknownst to me the medical staff at NMPS was constantly sending my surgeon e-mails concerning my case. I was advised by my surgeon at an April 27, 2004 appointment that NMPS personnel were asking him when I was able to demobilize. It was my impression they were pushing him to demobilize me. This issue appeared to upset my surgeon; he stated to me that he was retiring in the upcoming months and in order to help me with my case, that he was submitting a medical board on me so I can receive the proper assistance I need in my case. Also note that at this appointment the surgeon advised my fiancé and me about my radiology films showing that my clavicle was starting to separate...evidence that the injury was not getting better and the surgery had failed.

In the month of May 2004 I started to experience a great deal of pain and deformity to my right shoulder. To make matters worse I re-injured my right shoulder on May 24, 2004 directly after P/T in the locker room of the gym on base.

I was seen for a follow up visit on June 22, 2004 at BMC Primary care department and referred to the pain clinic and orthopedics for further options. On June 25, 2004 I met with another Navy orthopedic surgeon at the Miramar medical clinic. He advised me the surgery had completely failed and that the second step of the procedure would have to be done. His concerns were that he was retiring and that if the board found in my favor and medically retired me that I could easily have the surgery performed afterwards. I was ordered by this surgeon to bring my July 07, 2004 medical board finding to his office for review and he would get back to me.

On the morning of July 07, 2004 I received my board findings. I was shocked to see that it was not ruled in my favor. My condition was rated "Major" but I was given a minor percentage rating, which did not make sense to me. Finally my injuries were determined not to be combat related, regardless that defined by Title 26 U.S. Code Section 104(b) (3)(iii) states my injuries are to be considered combat related. I forwarded my appeal to the board, and gave in a copy to the surgeon's office as ordered. A few days later the surgeon called me with concern that I had a fight on my hands and advised me to wait for my appeal to come back. The problem was the surgeon would be retired by the time the appeal was completed. I would have to start back at square one with orthopedics and be seen by another surgeon to see when I could have surgery done. Bottom-line: I was not eligible for further surgery while my appeal was pending. There is no sound explanation why I should not receive a surgery that could make me whole while appealing my medical findings.

On August 13, 2004 I started pain therapy at NMCS D pain clinic. I started fibroproliferative injections to my shoulder to curb the pain and grinding sensation. I was also removed off the gamut of pain medications I was on and placed on Methadone, a formulated Opioid and Vioxx. I received a series of injections. My injury was viewed under a fluoroscope and was shocked to see the extent of separation in my shoulder. I was advised the maximum allowance of separation is 2-3 centimeters; mine was separated well over an inch and advised that all the pain treatment and medication would not help the issue. It was explained to my fiancé and me that this needed to be fixed, regardless of my status as a reservist.

On September 17, 2004 I received the finding from my board appeal. Again in disbelief, nothing was changed from the first set of findings, not even the issue of my injuries being combat related in accordance with Title 26 of the U.S. Code. I was counseled on my rights as a

member of the Armed Forces by the Medical Board office at NMCS D. In accordance with these rights I demanded a formal Physical Evaluation Board (PEB) Hearing.

On September 23, 2004 my fiancé and I returned to NMCS D orthopedics department as scheduled. I met with another Navy orthopedic surgeon. This surgeon told me he spoke to the SMO at BUPERS prior to my arrival, and the next statement he made was “Petty Officer Cuomo what do you want from us?” I could not believe what I had just heard. My fiancé and I both got very upset at this statement. I did everything I could to hold my composure. I stated that my surgery has completely failed and needed to be re-done. The surgeon examined my shoulder and I could see by the look on his face that he agreed with me. The deformity of my shoulder, the pain on ROM and the lack of ROM and the grinding sensation all warranted surgery. He said he would call an orthopedic surgeon at Naval Training Center (NTC) to see if he would be willing to do the surgery. He also stated that he would have to call the SMO at BUPERS for authorization to perform the surgery. Three weeks later I e-mailed the surgeon concerning this matter, he returned my e-mail stating that he would call BUPERS again. On November 08, 2004 I was handed an email from the SMO of BUPERS that stated “No further surgery permitted”, with no reason given. I couldn’t believe there was a surgery out there that could make me whole and the Navy refused to perform it.

On November 03, 2004 I received a CT scan of my brain due to persistent migraine headache. On the next day I received the radiologist’s report that my headaches were not injury related. The test concluded to be within normal limits.

On November 17, 2004 I was instructed by my command that I was to attend a meeting with the OIC and other officers from NMPS. Just before the meeting started I was introduced to all in attendance. During this meeting it was pointed out that I entered the Navy under the Advance

Paygrade Program (APG). This statement did not sit right with me, as I did not see the relevance of how I entered the service. An officer then went on to say to me, that it was he that was keeping me on active duty. I was under the impression that it was the series of appeals and my injury that was keeping me on active duty and I believe to this day the meeting was meant to make sure I knew that I was at the command's mercy. After this meeting several issues regarding command climate surfaced, including one incident where the command actually (and I believe improperly) took away all driving privileges for personnel on MEDHOLD.

On November 19, 2004 I reported back to my light duty assignment, just like I had been for the last year. I was called to the OIC's office; and asked why I was not living in the barracks. I told the OIC what had happened to me when I first arrived at NMPS long before she took over command. I also informed her that the past commander had no problem with me living where I did since many of the personnel assigned to NMPS did not live in the barracks. The OIC then advised me that she would like a copy of all of my travel claims for per-diem pay that I had submitted since I got there. On November 22, 2004 I had another meeting with the OIC. I was asked where I submitted my travel claims. I answered: "this command". The OIC stated that she thought it was not fair that I was receiving the higher per-diem rate authorized in my orders when other personnel assigned to the command were getting less; she advised me that she was starting an investigation in to this matter. My OIC also stated that I may have to return money to the Navy, but it was no fault of my own, she also felt at this point I may have to move into the barracks. Later that week I called legal services at NAVSTA San Diego concerning my having to move into the barracks and the financial strain it would put me in. I was advised that the Navy cannot order you where to live unless you are confined to base as a stipulation in a legal

proceeding. Again, it appeared that I was being targeted because I was insistent about my medical care.

On December 09, 2004 I was seen at the department of Neurology. After reviewing my CT scan results and examining me she had determined that my migraine headaches are stress induced. I was placed on Topamax indefinitely, and to remain using my Imitrex as needed. This issue is still on going.

On December 14, 2004 I attended my formal board hearing at the Naval Medical Center in Washington. My attorney reviewed my medical record and noticed that I was experiencing persistent migraine headaches through out the year and asked why this was not added in my case. I explained to him that I was advised by the medical board at NMCS D that my injury sustained in Iraq was the only condition being evaluated. He stated that I was misinformed; at the hearing he explained to the board that my shoulder at that time is considered to be a total loss without corrective surgery. That according to Federal law that my injuries are combat related and should be denoted as such. It was here that my attorney entered my migraine headaches as a part of my case. After the hearing I was released to return to California to await their decision.

On January 03, 2005 I was seen by the SMO of BMC San Diego for severe pain of my right shoulder, he treated me to the best of his ability and sent me home SIQ, and asked for me to return in three days for a follow up visit. The physician told me the clavicle is so far out of alignment that it is grinding up muscle tissue and will continue to cause me a great deal of pain until it is corrected.

On January 10, 2005 I received my finding from my formal medical board. My disability percentage was raised to the proper level for a condition rated as major and now (FINALLY) found to be combat related. The board chose to make my migraine headaches a part of the

present condition, the re-injury of my right shoulder that happened in May 2004. I now have an appeal in to the Director of Personnel Boards for correction of this – which is my final appeal. My migraine headaches started seven months before the re-injury and surgical failure and as noted by my neurologists are stress induced not injury related and therefore should be listed separately in my board findings. This is important because the findings of any disability for my injury will be increased for the migraines as a separate injury.

Finally, to make matters worse, on January 15, 2005 I noticed that my pay was much lower than normal. I went to my command to find out what happened. I was told that in accordance with the OIC's investigation, the Personnel Support Activity (PSA) West withheld \$1233.00 from my pay, and I was not paid for November 2003 and October, November and December of 2004 travel claims. I have also not been paid for January 2005 travel claims. This comes to a grand total of \$9442.00. All of these funds were removed or withheld without due process and without my ever having been informed there was a problem with my pay. I received no letter of indebtedness stating how much I was over paid, if in fact I was over paid. I was not afforded a payment plan either. On February 02, 2005 I faxed a letter of appeal to the garnishment department of Defense Financial Accounting Service (DFAS) in regards to this alleged debt. Seventy-two hours later I called this department to get the status of my appeal. When I spoke to a counselor at DFAS he stated that he saw that the money was removed from my account but there is no description as to why. He even asked me if the money was removed in accordance with a court martial! I explained to him what is noted in the above, this gentleman then stated that I needed to get legal involved because regulations for withholding and recouping pay were not followed.

On February 09, 2005 I submitted paperwork for a payroll advances through my chain of command. I explained that I needed the money to cover my bills. To date I have received no answer on this issue. Every two days I inquire through my Chief assigned to NMPS and get the same reply, that the OIC has it and to date has not replied.

In closing, I am an Advanced Emergency Medical Specialist from the New York City Fire Department and a World Trade Center Survivor. I was recalled to active duty to serve this great country and I was injured in combat related training. That combat related training injury has left me unable to perform my duties as a Medical Specialist. The Navy could perform a surgery that may help, but they won't. There is a significant shortcoming in the treatment of reservists transitioning from active duty to their civilian lives. If we are pending a medical board, we are not eligible for further surgery. If we are reservists, we are not entitled to limited duty status and all the protections LIMDU status provides. To make matters worse, I am only two years short of retirement from the FDNY. I will not be able to make that retirement in my current condition which will result in a disability pension worth about 1/3 what a normal pension would be. In my opinion, I have been mistreated by those in my chain of command. I have experienced pay problems and been portrayed as a "problem child" and believe I have been retaliated against because I am demanding that I receive all reasonable treatments that will allow me to return to my civilian job. Again, I thank the committee for this opportunity and I look forward to answering your questions.