



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

■  
Docket No. 151-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]

Ref: (a) 10 U.S.C. § 1552  
(b) 38 U.S.C. § 3311  
(c) PL 104-106 § 531  
(d) DODI 1341.13  
(e) OPNAVINST 1780.4  
(f) MILPERSMAN 1800-020

Encl: (1) DD Form 149 w/attachments  
(2) Statement of Service, 17 Mar 20  
(3) NAVPERS 1000/4, 22 May 15  
(4) DD Form 214, 6 May 20  
(5) DES Proposed Rating, 27 Nov 19  
(6) PEB Remarks, 15 Oct 19  
(7) DVA, 3 Dec 19  
(8) PEB Findings, 22 Jan 20  
(9) BUPERS Order 0520, 21 Feb 20  
(10) Advisory Opinion by NPC (PERS-00J), 27 Apr 22  
(11) Petitioner's Rebuttal Statement, 26 May 22

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), requesting that her naval record be corrected to establish entitlement to Post-9/11 GI Bill education benefits by amending date of transfer to the Temporary Disability Retired List (TDRL) to reflect 21 June 2020.

2. The Board, reviewed Petitioner's allegations of error and injustice on 6 July 2022, 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 enclosures (1) through (11), relevant portions of Petitioner's 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, found that, before applying to this Board, she exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

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[REDACTED]

a. In accordance with reference (b), an individual who served at least 30 days continuous active duty, on or after 11 September 2001, and was discharged or released from active duty in the Armed Forces for a service-connected disability is eligible to receive benefits under the Post-9/11 GI Bill. Pursuant to reference (c), graduates of the service academies incur a 5-year service obligation. As such, reference (d) states that all officers without earlier established eligibility, following commissioning through the Service academies be made aware that their eligible period of active duty for Post-9/11 GI Bill benefits does not begin until they have completed their statutory obligated active duty service.

b. In accordance with reference (e), directs Commanding Officers and Officers-in-Charge to ensure individuals receive information on the Post-9/11 GI Bill as part of pre-separation or release from active duty counseling. Furthermore, reference (e) directs individual Sailors to the Department of Veterans Affairs (DVA) web site for Post-9/11 GI Bill eligibility requirements.

c. In accordance with reference (f), the effective date for officers transferred to the TDRL will be effective on the date the Secretary of the Navy (SECNAV) approved retirement or on any date specified by SECNAV up to and including the first day of the following month. In addition, that the orders will be issued as soon as practical, following the SECNAV's approval.

d. Petitioner entered the U.S. Naval Academy on 30 March 2011 and graduated on 21 May 2015, and on 22 May 2015 was commissioned and entered active duty. See enclosures (2) through (4).

e. Petitioner's Physical Evaluation Board (PEB) process began on or about 25 June 2019. On 15 October 2019, the PEB Medical Officer and Presiding Officer remarked there was evidence that established Petitioner, due to disability, was unable to reasonably perform the duties of her rank. See enclosures (5) and (6).

f. On 3 December 2019, the DVA notified Petitioner that "We are proposing that your total combined rating for service-connected disability is 100%." See enclosure (7).

g. The PEB convened on 22 January 2020 and found Petitioner unfit and recommended she be placed on the TDRL with a combined disability rating of 100%. See enclosure (8).

h. On 21 February 2020, Petitioner issued BUPERS Order 0520 (Official Retirement Orders) to transfer to the TDRL effective 28 April 2020. See enclosure (9).

i. Petitioner separated on 27 April 2020 with 4 years, 11 months, and 6 days of total active duty service and transferred to the TDRL 28 April 2020. See enclosure (4).

j. On 27 April 2022, Navy Personnel Command [REDACTED] provided an unfavorable advisory opinion to enclosure (1). [REDACTED] recommended disapproval of relief based on "Petitioner has not met her burden to overcome the presumption of regularity attached to the official actions of the Navy." See enclosure (10).

k. On 26 May 2022, Petitioner's counsel provided a response to [REDACTED] findings indicating a larger, systemic problem with the military's duty to transitioning service members,

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and that her pre-separations counseling through the Transition Assistance Program (TAP) was improper by statute, regulation, and instruction. See enclosure (11).

#### BOARD CONCLUSION

Upon review and consideration of all the evidence of record, and despite the contents of enclosure (2), the Board concluded Petitioner's request warrants favorable corrective action. In this regard, the Board determined Petitioner was placed on TDRL and due to COVID-19 restrictions, was mandated to complete pre-separation classes and counseling virtually. The Board found that if Petitioner had the opportunity to attend the standard in-person TAP class, she could have addressed the unique circumstances surrounding her retirement having a direct effect on her eligibility to Post-9/11 GI Bill education benefits. Although there is no error, the Board felt had Petitioner received the proper counseling, she would have requested a retirement date that would have rendered her eligible for Post-9/11 GI Bill education benefits. Therefore, under these circumstances, relief is warranted.

#### BOARD RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

BUPERS Order: 0520 (Official Retirement Orders) were modified to reflect transfer to the TDRL effective "22 June 2020" vice "28 April 2020."

Petitioner executed 50 days of leave beginning 27 April 2020 and sold "0.00" vice "50.5" days of leave.

Petitioner will be issued a DD Form 215, Correction to DD Form 214, Certificate of Release or Discharge from Active Duty with block 12.b as "21 June 2020" vice "27 April 2020" and block 12.c as "5 year(s), 1 month(s), 0 day(s)" vice "4 year(s), 11 month(s), 6 day(s)" and block 16 as "0.00" vice "50.5" days of leave.

Note: Defense Finance and Accounting Service will complete an audit of Petitioner's pay records to determine the appropriate adjustments to retirement pay.

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

8/3/2022

[REDACTED]  
Executive Director

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[REDACTED]

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Recommendation (Grant Relief)

Reviewed and Approved Advisory Opinion Recommendation (Deny Relief)

8/15/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

[REDACTED]