



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

[REDACTED]  
Docket No. 1131-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED], USN,  
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149  
(2) Advisory opinion by medical professional dated 10 April 2023

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 by being found unfit for continued naval service and placed on the Permanent Disability Retirement List (PDRL).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 25 May 2023, 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 enclosure (2), an advisory opinion (AO) from a medical professional, the physician advisor to the Board. Although Petitioner was provided an opportunity to respond to the AO, she chose not to do so.

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.

b. The Petitioner enlisted in the United States Navy and entered active duty on 7 June 2016. In May 2018, Petitioner suffered the stillborn delivery of her child at over 35 weeks of pregnancy; shortly thereafter, she started treatment for Major Depression. In 2019, Petitioner underwent a parathyroidectomy and, as a result of this surgery, experienced nerve damage causing partial paralysis of her vocal chords. On 7 March 2020, an examining Physician found Petitioner not physically or mentally fit for re-enlistment due to fibromyalgia, thyroid dysfunction, and Major Depression. The Physician concluded Petitioner was unfit for operational/sea duty and should be placed on limited duty.

On 11 May 2020, the Flight Surgeon, [REDACTED] initial Integrated Disability Evaluation System (IDES) paperwork and referred Petitioner to Naval Medical Center

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USN, XXX-XX-[REDACTED]

[REDACTED] for evaluation and processing for a medical evaluation board (MEB). On 19 May 2020, the MEB referred Petitioner to the Physical Evaluation Board (PEB) for determination of fitness for the conditions of Post-procedural hypothyroidism, hypocalcemia, Fibromyalgia, and Major Depressive Disorder.

On 13 April 2021, Petitioner's commanding officer (CO) wrote a non-medical assessment stating Petitioner was not worldwide assignable, did not have good potential for continued service in her present physical and mental condition, did not desire to continue their military service, and was not recommended for Permanent Limited Duty if found unfit. The CO commented Petitioner was unable to maintain sustained performance in a very high paced and demanding environment due to limited presence from medical appointments and the demands/stressors of rate/rank have a negative effect on her medical condition. He did not consider her shipboard, overseas, or combat duty assignable and recommended the PEB find her unfit for continued service.

On 27 October 2021, the Informal Physical Evaluation Board determined Petitioner to be Fit and recommended a disposition of Fit to Continue on Active Duty stating: "The evidence demonstrates the member is able to reasonably perform duties of her rating. The SM was referred for several chronic conditions that despite diagnoses has not significantly impacted performance over her career."

On 8 November 2021, Petitioner elected to contest the IPEB findings and request a Formal PEB hearing. To support her request, Petitioner wrote a statement in rebuttal to the IPEB findings, and included statements in support from her husband and her Lead Petty Officer. On 2 December 2021, Petitioner emailed her Physical Evaluation Board Liaison Officer (PEBLO) confirming the PEBLO received her Election of Options and her rebuttal evidence supporting her request. The PEBLO replied, stating Petitioner's FPEB request was sent to the PEB on 22 November 2021 and that she would get her FPEB date in 4-6 weeks. On 11 January 2022, the PEB reviewed the case, denying the Petitioner a formal hearing noting that no new evidence was received, and that the Petitioner did not make any additional statements supporting her request. Petitioner was subsequently discharged from service, on 6 April 2022, with an Honorable characterization of service due to completion of required active service.

c. Petitioner claims she underwent a series of surgical procedures on active duty to include removal of her thyroid and parathyroid, which resulted in a paralyzed vocal chord, depression, and chronic pain and weakness. She states that these conditions limited her naval career as she was unable to handle high stress-environments without having pain flares. Petitioner argues she was unjustly denied a formal PEB hearing due to the PEBLO's failure to submit supporting documents to the PEB.

d. In order to assist it in evaluating the Petitioner's contentions, the Board obtained an AO, enclosure (2). The AO noted that Petitioner's evaluations showed a consistent record of sustained superior performance and the evidence submitted by Petitioner would likely not have changed the decision by the PEB to deny the request for a Formal PEB Hearing, nor reverse the IPEB's finding of Fit for continued service. The AO did find, however, that Petitioner's supporting evidence such as her statements in support of her request and additional clinical evaluations were not forwarded by the PEBLO to review.

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## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board determined that the interests of justice support granting Petitioner a Formal PEB Hearing. In reaching this conclusion, the Board concurred with the AO that the PEBLO did not submit Petitioner's evidence, when she properly sent it to the PEBLO to add to her rebuttal package. The Board further determined that by not submitting the evidence the Petitioner was unjustly denied the right to have the evidence reviewed by the PEB to grant a formal hearing.

Despite the Board's recommendation to grant partial relief as a matter of injustice, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner, including placing her on PDRL. Specifically, the Board found insufficient evidence of error or injustice with the PEB's findings in her case. In making this determination, the Board substantially concurred with the AO.

## RECOMMENDATION

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

That Petitioner be granted a Formal Physical Evaluation Board hearing and be allowed to submit evidence to the PEB in support of this hearing. Petitioner shall be afforded all the due process required by applicable disability evaluation system regulations.

And no other relief.

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.

6/14/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]