



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

[REDACTED]
Docket No: 2313-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] [REDACTED] [REDACTED].
[REDACTED], USMC, XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 1214a
(c) DODM 1332.18 Volume 1, DES Manual: General Information and Legacy DES Time Standards, 5 August 2014
(d) DODI 1332.18, Disability Evaluation System, 5 August 2014 (incorporating Change 1, effective 17 May 2018)
(e) SECNAVINST 1850.4E, Department of the Navy (DON) Disability Evaluation Manual, 30 April 2002
(f) MCO P1900.16F, Ch. 2, Separation and Retirement Manual (MARCORSEPMAN)
(g) USD (P&R) Memo, "DoD Retention Policy for Non-Deployable Service Members, 14 February 2018
(h) MCO P1400.32D, Ch. 2, Marine Corps Promotion Manual, Volume 2, Enlisted Promotions (MARCORPROMAN, VOL 2, ENLPROM), 14 June 2012

Encl: (1) Order, in the case of *[Petitioner] v. The United States*, in the United States Court of Federal Claims, Case No. [REDACTED], filed 28 February 2022
(2) DD Form 149 (w/enclosures)
(3) ASN (M&RA) Memo, subj: Overseas Integrated Disability Evaluation System (IDES) Policy Guidance, 15 August 2011
(4) NAVIG Triennial Disability Evaluation (DES) Review, Fiscal Years 2013, 2014, 2015 (excerpt)
(5) DON DESCPC Director Memo, subj: Objection to Overseas Integrated Disability Evaluation System, 3 August 2018
(6) ASN (M&RA) Memo, subj: Update – Disability Evaluation System (DES) Policy Guidance Concerning Overseas and Remote Duty Locations, 20 March 2020
(7) DD Form 4/1, Enlistment/Reenlistment Document, Armed Forces of the United States (20041210)
(8) [REDACTED] Regional Medical Center Memorandum for Record [REDACTED] [REDACTED], 27 February 2018
(9) DD Form 214
(10) DD Form 4/1 Enlistment/Reenlistment Document, Armed Forces of the United States (20120917)
(11) NAVMC 321A, Agreement to Extend Enlistment, 26 August 2015
(12) NAVMED 6100/5, Abbreviated Medical Evaluation Board Report, 24 August 2017
(13) NAVMED 6100/1, Medical Board Report Cover Sheet

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active duty in the Marine Corps; (2) Review of her fitness for continued naval service under the appropriate Disability Evaluation System (DES); (3) Alternatively, early retirement pursuant to the Temporary Early Retirement Authority (TERA); (4) Retroactive pay and allowances dating back to her wrongful separation; (5) Reimbursement of all out-of-pocket medical expenses incurred which would not have been incurred but for her removal from TRICARE;² (6) Promotion to the rank of Master Sergeant; and (7) Any other relief which the Board deems just and proper under the circumstances of Petitioner's case. See Enclosure (2).

3. The Board reviewed Petitioner's allegations of error or injustice in accordance with enclosure (1) on 29 September 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval records.³ Documentary materials considered by the Board included the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.⁴

4. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. By memorandum dated 15 August 2011, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) implemented the Overseas IDES (OIDES) program, whereby Department of the Navy (DON) personnel assigned overseas would receive an initial screening by the DON Physical Evaluation Board (PEB) before being issued permanent change of station orders to a location in the continental United States (CONUS) for entry into and processing through the IDES.⁵ See enclosure (3). This review would not constitute the fitness determination that the PEB typically provides, but rather was limited to making a recommendation as to whether the Service member should be referred to the IDES and therefore reassigned to a CONUS-based location for that purpose. During its triennial review of the DON DES for Fiscal Years 2013, 2014, and 2015, the DON Inspector General (NAVIG) noted several problems with the OIDES. Specifically, NAVIG noted that the concept of a "quick look" by the PEB may negate a number of due process protections and undermine the physician's

² This requested relief is not within the Board's authority to grant. Petitioner may file a claim for such compensation through the Defense Health Agency.

³ The Board's findings were not unanimous with regard to the appropriate relief to be granted. The separate Majority and Minority findings and recommendations in this regard are detailed below.

⁴ The Board originally reviewed Petitioner's allegations of error or injustice on 8 September 2022, and recommended that Petitioner be granted "equitable" relief in the form of a "recall to active duty for the sole purpose of referral to the IDES." This relief was directed based upon the findings of the advisory opinion (AO) at enclosure (29), but specifically denied Petitioner the constructive service credit (CSC) requested. As such, the Board did not address Petitioner's contention that her discharge was void, or Petitioner's follow-on contentions that the CSC doctrine applied and that she was entitled to promotion consideration. During the post-Board review process, a legal review of the draft record of proceedings identified these deficiencies and opined that the Board's decision was arbitrary and capricious because it failed to address Petitioner's non-frivolous contentions. The legal review also noted that the relief directed by the Board would be ineffective since there was no authority to recall Petitioner to active duty for the purpose stated, and that the only methods to restore her active duty status would be through a correction of her record to reflect that she was never actually discharged (with appropriate service credit) or through her voluntary reenlistment. The case was therefore sent back to the Board for further deliberations, which occurred when the Board members reconvened on 3 October 2022.

⁵ Relocation to CONUS for processing through the DES was necessitated by the integration of the Department of Veterans Affairs (VA) in the IDES, as there are no VA systems at overseas military treatment facilities (MTF).

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prerogatives within the system; that the OIDES introduces a possibility of abuse of the system if commands decide to administratively separate the service member when a medical board may have been warranted; that it introduces an inequity when a service member assigned overseas is able to avail himself or herself of a voluntary administrative separation when the CONUS-based service member may not; that the OIDES process places inappropriate burdens on overseas MTFs; and that the OIDES is not aligned with the intent of Congress since it creates a separate DES process. Accordingly, NAVIG recommended that the OIDES program be ended and that DON personnel stationed overseas be returned to a CONUS MTF for a definitive evaluation and appropriate entry into the DES. These findings and recommendations were forwarded by NAVIG to the ASN (M&RA) by memorandum dated 1 February 2016. See enclosure (4). Despite this recommendation and a subsequent objection to the OIDES by the Director, DON DES Counsel Program (DESCP),⁶ the OIDES policy was not cancelled until 20 March 2020. See enclosure (6).

b. Petitioner enlisted in the Marine Corps Reserve on 10 June 2004 and began her initial entry training on 24 June 2005. According to Petitioner, she incurred a repetitive use injury while in basic training, which a Medical Evaluation Board (MEB) recommended for referral to the PEB. Rather than delay her training and career progression, Petitioner elected not to pursue a PEB, and completed her initial entry training. She asserts that this injury continued to affect her throughout her career.⁷ See enclosures (2) and (7).

c. Petitioner was assigned to the ██████████ Engineer Support Battalion as a reservist from 2006-2009. See enclosure (8). On 2 February 2007, Petitioner reports having sustained a concussion and mild traumatic brain injury (TBI) when she was involved in an in-line of duty vehicular accident while serving on active duty.⁸ She reported to Officer Candidate School in ██████████, ██████████, or ██████████, but was reportedly unable to complete the training due to a service-connected medical condition and was returned to her normal reserve duties. See enclosure (2).

d. On 23 June 2009, Petitioner was augmented to active duty and began an extended period of active duty service. See enclosure (9).

⁶ See enclosure (5). By memorandum dated 3 August 2018, the Director, DESCP, informed the ASN (M&RA) that the OIDES deprives DON personnel stationed overseas of substantive rights. Specifically, the DESCP Director noted that reference (b) provides that service members cannot be involuntarily discharged or denied reenlistment due to unsuitability for deployment for any condition found “fit” by the PEB, so overseas personnel who are not formally found “fit” are in danger of being separated or denied reenlistment as a consequence of not having been referred into the IDES. The DESCP Director also noted that the OIDES deprives overseas personnel of the right to the assistance of legal counsel during the DES process, as required by reference (c). Accordingly, the DESCP Director recommended that the ASN (M&RA) immediately cancel the OIDES policy and require the Secretary of the Navy Council of Review Boards and the PEB to coordinate with the Bureau of Medicine and Surgery to properly refer and process wounded, ill, and injured service members assigned overseas through the IDES process.

⁷ The Board does not question that this injury affected Petitioner throughout her career, but notes that her subsequent lengthy and successful career strongly suggests that this injury did not render her unfit for continued service. As such, a PEB likely would have, or should have, found her medically fit if Petitioner had elected to pursue the PEB referral recommended by her MEB.

⁸ Petitioner claims that she was treated at a civilian medical facility, but her medical treatment is not documented in her military records.

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k. By memorandum dated 30 January 2018, Petitioner indicated that she agreed with the PEB recommendation that she not be referred into the IDES. See enclosure (15).

l. On 9 March 2018, another MEB placed Petitioner on LIMDU from 8 December 2017 to 8 June 2018 for chronic left biceps tendinopathy, chronic right first toe pain, and left Morton neuroma pain.¹⁴ See enclosure (16). The supporting documentation for this MEB indicated a good prognosis for recovery for the latter two conditions. She had recovered from the surgical procedures to her left foot and ankle, and had responded well to injections for the left Morton's neuroma. As of 27 February 2018, she was on the waiting list for revision right foot surgery, and her provider believed that this surgery would help alleviate a majority of her pain and return her to normal activities. See enclosure (8). It also indicated that Petitioner had been treated for left shoulder pain (diagnosed as chronic left bicep tendinopathy) in multiple specialty clinics since 2014, and that the condition had not improved despite the use of oral/topical medications, participation in physical therapy, and multiple injection procedures. See enclosure (17).

m. On 28 March 2018, Petitioner's chronic left biceps tendinopathy, right toe pain, and left Morton's neuroma conditions were forwarded to the PEB pursuant to the OIDES policy. See enclosure (18).

n. By memorandum dated 18 April 2018, the PEB determined that Petitioner's referral to the IDES was not warranted. See enclosure (19).

o. By memorandum dated 30 April 2018, Petitioner indicated that she did not agree with the PEB's recommendation, and requested reconsideration of the decision not to refer her to the IDES. See enclosure (20).

p. By memorandum dated 10 May 2018, Petitioner's commander provided a revised non-medical assessment (NMA) of Petitioner's condition to the PEB. This NMA commented favorably on Petitioner's duty performance and abilities, but noted her extended absences from the workplace due to medical issues and her inability to physically perform certain tasks associated with her military occupational specialty (MOS). It also noted that she was not world-wide deployable due to her continuing medical issues, and cited to reference (f) to suggest that she should be granted the opportunity for consideration by a PEB for full consideration of her injuries and medical issues.¹⁵ See enclosure (21).

q. By memorandum dated 23 May 2018, the PEB again determined that Petitioner's referral to the IDES was not warranted after review and reconsideration of its original decision and the additional materials provided by Petitioner.¹⁶ See enclosure (22).

¹⁴ The limitations imposed were no running, jumping, push-ups, pull-ups, overhead activities, and no Combat/Physical Fitness Test.

¹⁵ Petitioner's commander had submitted a NMA for the previous PEB review which made essentially the same comments regarding Petitioner's capabilities, but which did not include his suggestion that Petitioner be granted the opportunity for consideration by a PEB for full consideration of her injuries and medical issues.

¹⁶ The additional materials provided by Petitioner were her non-concurrence with the previous decision (enclosure (20)), and the new NMA (enclosure (21)).

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z. On 10 September 2021, Petitioner filed suit in the COFC. As discussed above, the COFC remanded Petitioner's case to the Board over Petitioner's objection on 28 February 2022. See enclosure (1).

aa. On 25 March 2022, Petitioner submitted a signed DD Form 149 with additional matters for consideration pursuant to the COFC's Order. Specifically, Petitioner alleges that she was improperly denied the due process protection of the IDES due to her diversion into the unlawful OIDES.¹⁸ If she had been entered into the IDES and referred for a formal PEB, she asserts that she would have either been found fit for continued naval service, and therefore immune from denial of reenlistment per reference (b), or found medically unfit for continued naval service and medically separated or retired. Petitioner asserts that her placement in the IDES would have superseded her EAS, and that her discharge on 16 October 2018 was therefore void as a matter of law. Finally, Petitioner asserts that she is entitled to promotion to Master Sergeant because she would have been so promoted with her peers if she had remained on active duty. Petitioner further asserts that, because she has not been properly released from active duty, the PEB must evaluate her in her current condition and that she is eligible for early retirement under the TERA.¹⁹ If returned to active duty, Petitioner asserts that her records must be corrected to show continuing service since her date of discharge, promotion to Master Sergeant, and award of all pay and entitlement which she would have received. See enclosure (2).

bb. By memorandum dated 15 June 2022, the Director, Secretary of the Navy Council of Review Boards (CORB), provided an AO for the Board's consideration, which found insufficient support for Petitioner's request.²⁰ This opinion was based upon the evidence which demonstrated Petitioner's consistently effective performance of assigned duty related tasks and personnel record, along with other evidence touting Petitioner's extraordinarily highly valued professional talent and skills. It also found that the PEB acted within the scope of existing regulations (i.e., the OIDES policy), and that the evidence it considered emphasized Petitioner's favorable prognosis for recovery. None of the duty limitations imposed upon Petitioner for her conditions would have required a finding of unfitness, especially in light of the evidence reflecting her effective performance of duties. See enclosure (28).

cc. By memorandum dated 7 July 2022, the OJAG Administrative Law Division (Code 13) provided an AO for the Board's consideration. This AO found that, although neither Department of Defense (DOD) nor DON policy reflects an absolute right to counsel at all stages of DES

condition and femur stress fracture), right thumb strain, degenerative disc disease of the cervical spine, left wrist sprain, right hip trochanteric pain syndrome, left collateral ligament sprain status post-surgical procedure, Morton's neuroma with metatarsalgia (left foot), left knee strain with shin splints (also claimed as femur condition and femur stress fracture), hallux valgus right foot, scars, and post-traumatic stress disorder (combined with traumatic brain injury, which received a stand-alone disability rating of 70 percent).

¹⁸ Petitioner alleges that her third denial of entry into the IDES, upon her return to CONUS, was based upon her first two denials through the OIDES.

¹⁹ Petitioner asserts that such relief would obviate the need for any lengthy PEB proceedings, allow her to put these proceedings behind her, and provide an equitable remedy.

²⁰ The Board requested that the CORB provided "a narrow [AO] addressing the medical records, medical evaluations, medical standards of fitness and findings of fitness and whether Petitioner was unfit under the appropriate standards to be qualified for PEB disability retirement, or whether she was fit and her current disabilities were manifestation based."

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processing, reference (d) required the DON to make counsel available to Petitioner upon referral of her case into the OIDES process based upon the requirement to make counsel available during the disability evaluation process. It further opined that the OIDES process did not comply with the requirements of reference (d), as a decision by the OIDES not to refer a case into the IDDES was essentially final for Petitioner, who had no ability to seek further review with the assistance of counsel under either the IDDES or the legacy DES, and that it had the effect of denying Petitioner the protection Congress intended to provide under the reference (b). See enclosure (29).

dd. By letter dated 10 August 2022, Petitioner, through counsel, responded to the CORB AO referenced in paragraph 4bb above. This response noted that the CORB AO did not cite to reference (e), and asserted that the AO arrived at its conclusion by repeating, and accepting, the systemic failures of the OIDES policy which gave rise to this case in the first place. Petitioner also described the CORB AO as disjointed and confusing, and noted that it failed to answer the questions asked of it by the Board.²¹ See enclosure (30).

ee. By separate letter also dated 10 August 2022, Petitioner, through counsel, responded to the Code 13 AO referenced in paragraph 4cc above, indicating her agreement with its conclusions. See enclosure (31).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board found no error in Petitioner's EAS discharge, but did find that equitable relief is warranted as described below. The Majority considered the AO provided by the CORB at enclosure (28), but found it to be only marginally relevant.²² The Majority also generally agreed with the premise of the AO provided by OJAG Code 13 at enclosure (29) regarding the legality of the OIDES policy, but ultimately disagreed with the conclusions of this AO as they applied to Petitioner because those conclusions were premised upon the assumption that that Petitioner's referral to the OIDES equated to a referral to the DES. As discussed further below, the Majority did not accept this premise.²³

The Majority did not find any error in Petitioner's EAS discharge under the circumstances. In making this determination, the Majority generally agreed with the Code 13 AO and Petitioner that the OIDES policy would have denied certain service members of their due process rights under the IDDES. The subsequent decision of the DON to discontinue the OIDES policy

²¹ As discussed further below, the Board did not rely upon the CORB AO in reaching its conclusions.

²² The CORB AO focused on the evidence as it pertained to Petitioner's medical fitness for continued service. The Majority determined that Petitioner's medical fitness had only marginal relevance, as the primary concern was whether she should have been referred to the PEB for a fitness determination in the first place. The assessment of Petitioner's medical fitness is relevant only as it pertained to the failure to refer Petitioner to the PEB upon her return to CONUS because paragraph 3202g of reference (e) provides that members who are being processed for separation for reasons other than physical disability shall not be referred to disability evaluations unless, among other reasons not relevant here, the member's physical condition reasonably prompts doubt that she is fit to continue performing the duties of her office, grade, rank, or MOS.

²³ The Majority notes that Petitioner, through counsel, stated in enclosure (30) that the OIDES was not part of the DES.

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doubts regarding her fitness for continued naval service. Under the standard suggested by Petitioner for referral to the DES/PEB, every Service member who undergoes a surgical procedure requiring more than 30 days of recovery, or who requires more than 30 days of LIMDU to fully recover from any medical condition, must be referred to the IDES (and in the case of members assigned overseas, returned to CONUS for the duration of the process). This is simply not the case.

Because Petitioner did not meet the criteria for referral to the DES under either reference (d) or (e), she was not entitled to the protections inherent in the IDES, to include the right to the assistance of a PEB Liaison Officer and/or a DES attorney. This is the reason for the Majority's disagreement with the conclusion of enclosure (29), as the AO's conclusion was premised upon the assumption that Petitioner's referral to the OIDES equated to referral to the IDES. Likewise, she was not entitled to the protection of reference (b). Absent the right to such referral, Petitioner's argument that the PEB would have either found her unfit for continued service and therefore granted her a medical retirement or separation (depending upon the disability rating assigned), or found her fit and therefore protected from the denial of reenlistment pursuant to reference (b), is moot. There was also no error in Petitioner's EAS discharge. In this regard, the Majority applied the presumption of regularity to establish that Petitioner was properly denied reenlistment in the absence of a right to the protections of the IDES or reference (b). Enclosure (24) suggests that the Marine Corps properly considered the factors listed in reference (f) in denying Petitioner's request to extend her enlistment for medical purposes.³⁵ As Petitioner did not assert any error in her EAS discharge other than her contention that she was improperly deferred into the OIDES and therefore denied the protections of the IDES, the Board had no other basis to find an error in this action. As such, Petitioner's contention that her discharge was void as a matter of law and that she is therefore entitled to CSC from the date of her discharge (and the back pay and allowances that would arise from it) was also without merit. Likewise, there is no basis to grant Petitioner the promotion to Master Sergeant that she contends was denied by her discharge. Finally, there is no basis to grant Petitioner early retirement under the TERA, as without CSC she does not have the 15 years of service required to qualify for such an early retirement.

While the Majority found no error in the failure to afford Petitioner the due process protections of the IDES or in her EAS discharge, it did find the denial of her request for reenlistment to be unjust under the circumstances. Based upon enclosure (21), it appears that Petitioner's was denied the opportunity to reenlist because of the guidance of reference (g) to either process for administrative separation or refer into the DES those Service members who have been non-deployable for more than 12 consecutive months for any reason. This guidance, however, was not absolute, as it specifically provided for waivers to this general rule. Petitioner's commander opined in enclosure (21) that it was not proper to process her for administrative separation when she had significant ongoing medical issues that have not been resolved, but his suggested solution to refer her to the PEB was not appropriate for the reasons stated above. As Petitioner was, by all accounts, a highly competent Marine who would have recovered from her medical conditions in due time, a waiver to permit her continued service would have been appropriate under the circumstances. The Board also considered the fact that Petitioner likely could not have

³⁵ See paragraph 8111 of reference (f).

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been denied reenlistment per reference (b) if the PEB had issued the findings it did under the OIDES pursuant to the IDES. While the PEB's findings under the OIDES did not technically amount to a finding of fitness, the PEB's rationale suggests that it would have found Petitioner's to be fit for continued service under the circumstances if Petitioner was referred to the IDES.³⁶ While Petitioner was not entitled to the protection of reference (b) under the circumstances, the Board does find her denial of the opportunity to reenlist under the circumstances to be unfair, and therefore an injustice warranting relief.

Having found an injustice in the denial of Petitioner's opportunity to reenlist under the circumstances, the Majority recommends that Petitioner be given the opportunity to reenlist in the Marine Corps in the grade of E-7 if she chooses to do so and is otherwise qualified. If necessary, a medical waiver is to be granted to enable such reenlistment. Upon reentry on active duty, Petitioner may be referred to the DES if she meets the criteria for such referral, although the Majority makes no findings in regard to her current physical condition. To be clear, this relief is recommended pursuant to the Board's equitable relief authority, and not to correct any error in Petitioner's discharge. Accordingly, the Majority does not believe it necessary or appropriate to grant Petitioner the CSC or promotion that she requests. Petitioner may achieve such service and advancement in due course pursuant to her reenlistment if she chooses to do so.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be offered the opportunity to reenlist in the Marine Corps in the grade of E-7 within 60 days of this decision.³⁷ Assuming that she is otherwise eligible for such reenlistment, the necessary medical waivers to enable Petitioner's reenlistment will be issued.

If Petitioner accepts the opportunity to reenlist under the conditions expressed herein, then the Defense Finance and Accounting Service (DFAS) should conduct an audit of Petitioner's finance records to determine what, if any, action this correction may entail. Likewise, the VA is to be notified that Petitioner has reentered active duty to take whatever action it deems appropriate with regard to Petitioner's continuing entitlement to disability compensation.

If Petitioner refuses the opportunity to reenlist under the conditions expressed herein, then no further corrective action is to be taken on Petitioner's naval record.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board generally agreed with the conclusions of the Majority. Specifically, the Minority found no error in the failure to refer Petitioner to the IDES for the reasons stated above, and therefore no error

³⁶ This conclusion is also supported by the CORB AO at enclosure (28).

³⁷ This is the suspense to offer Petitioner the opportunity to reenlistment, and not necessarily her suspense to accept the offer. Petitioner is to be provided a reasonable time to act upon such offer, as she may need to resolve certain obligations.

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Despite finding that Petitioner likely would not have reached her EAS date but for the effect of the OIDES policy and that she is therefore entitled to CSC dating back to her discharge date, the Minority did not believe that her promotion was appropriate relief. In this regard, the Minority noted that promotion to Master Sergeant is highly selective and a competitive process, and that the likelihood of Petitioner's selection is impossible to determine. As such, her automatic advancement to Master Sergeant would represent an injustice for those who have had to compete for the advancement, and would not be in the best interest of the Marine Corps. Rather, the Minority determined that a continuity memorandum should be placed in Petitioner's record notifying any future selection boards that she was granted CSC by order of the Secretary of the Navy through the Board, and instructing that no negative inferences are to be drawn from the absence of assignments or fitness reports (FITREP) for the period in question. Further, upon the correction of her records and her return to active duty as directed below, the Minority recommends that Petitioner's record be referred to the Enlisted Remedial Selection Board (ERSB) in accordance with reference (h) to provide her fair consideration for promotion to master sergeant under the criteria for each regularly scheduled selection board for which she would have qualified but for her discharge.

It is not within the Board's authority to direct the repayment of medical expenses that would not have been incurred but for her EAS discharge. Petitioner may seek repayment of these expenses through a claim to the Defense Health Agency.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that Petitioner was not discharged on her EAS date of 16 October 2018, but rather that she was properly reenlisted and continued to serve honorably on active duty after that date. Petitioner is to be restored to active duty as soon as practicable, and granted CSC from the date of her discharge.

That all references to Petitioner's EAS discharge be removed from Petitioner's record, including but not necessarily limited to, her DD Form 214, her NAVMC 321A requesting extension of her enlistment, and the memorandum from MMSR-4 denying her request to extend her reenlistment.

That a continuity memorandum be placed in Petitioner's record explaining that she was granted CSC from the date of her previous discharge until the date of her restoration of active duty by order of the Secretary of the Navy through the Board for Correction of Naval Records, and that no negative inferences are to be drawn by either the grant of such CSC or the absence of assignments or FITREPs for the relevant period.

That, upon her restoration to active duty and after correction of her records as directed herein, Petitioner's record be referred to the ERSB in accordance with reference (h) to provide her fair consideration for promotion to Master Sergeant under the criteria for each regularly scheduled selection board for which she would have been eligible during the period of her CSC.

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That DFAS conduct an audit of Petitioner's finance records to determine what, if any, pay and allowances Petitioner may be due as a result of the corrections reflected herein, as well as any offsets for payments made pursuant to Petitioner's previous unjust discharge being corrected by this action.

That the VA be notified immediately upon Petitioner's restoration to active duty to take appropriate action with regard to Petitioner's continued and previous receipt of disability compensation in light of the corrections to her record reflecting that she remained on active duty continuously since the date of her discharge.

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 titled matter.

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

10/3/2022

X

[REDACTED]
Executive Director

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[REDACTED], USMC, XXX-XX-[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – I approve and direct the relief recommended by the Majority of the Board, as reflected above.)

MINORITY Recommendation Approved (Partial Relief – I approve and direct the relief recommended by the Minority of the Board, as reflected above.)

Board Recommendation Denied (I disagree with the Board’s finding of injustice and direct that no corrective action be taken on Petitioner’s naval record for the following reason(s): _____

_____)

Other (I make the following alternative findings and direct the following alternative relief for the following reasons: _____

_____)

10/6/2022

X [REDACTED]

Assistant General Counsel (M&RA)
Signed by: [REDACTED]