



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

█
Docket No. 4861-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █ █, USNR,
█

Ref: (a) Title 10 U.S.C. § 1552
(b) ALNAV 037/22

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion by PERS-91, 28 Jul 2022
(3) Advisory Opinion by PERS-00J, 22 Sep 2022

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 rescindment of her retirement that became effective 1 May 2022, which would allow her to continue service in the Naval Reserve.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 27 October 2022, and pursuant to its regulations, determined 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 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 as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 2 August 2021, Navy Personnel Command, Reserve Retirements Branch (PERS 912) received Petitioner's Application for Retired Pay Benefits, with a requested retirement date of 1 May 2022. On 9 May 2022, her request to transfer to the Retired Reserve and application for retired pay were approved. Petitioner received her first retirement payment on 1 June 2022.

c. On 9 June 2022, Petitioner was selected for promotion to Captain/O-6 in the Supply Corps, pursuant to reference (b), after two failures of selection the previous promotion cycles. Her nomination for appointment to Captain was confirmed by and with the advice and consent of the Senate on 1 August 2022.

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d. Petitioner contends she did not think she would be selected for promotion to Captain, after failures of selection the previous two years, so she submitted her retirement request. She further explains that immediately after learning she had been selected for promotion, she requested to rescind her retirement and continue her faithful service.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined Petitioner's request warrants relief. The Board, relying on enclosures (2)¹ and (3),² determined that in the interest of justice, Petitioner's retirement should be rescinded, allowing her to return to active drilling status in the Naval Reserve.

RECOMMENDATION

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

Petitioner's record be corrected to reflect she was not retired on 1 May 2022 but served continuously with no break in her service in the Naval Reserve in an active drilling status, to include removal of all documentation associated with her retirement.

Providing she is otherwise qualified, Petitioner's record be corrected to reflect she was promoted to Captain/O-6 on the effective date she would have been promoted, if not for her now-rescinded retirement on 1 May 2022.

Note: The Defense Finance and Accounting Service (DFAS) will conduct an audit of Petitioner's payment record to determine the pay entitlements that are due as a result of her record being corrected to reflect she was not retired on 1 May 2022.

That no further changes be made to Petitioner's naval record.

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.

¹ Enclosure (2), PERS-91, noted that the Reserve Officer Community Manager's support Petitioner's request due to current end strength, recommended the Board grant Petitioner's requested relief.

² Enclosure (3), Office of Legal Counsel (PERS-00J), noted the Navy did not make an error or commit an injustice in approving Petitioner's request to transfer to the Retired Reserve and begin receiving retired pay. Rather, it was Petitioner's error in submitting her request to retire before the results of the selection board were released. However, PERS-00J noted the Board may determine Petitioner's request should be approved because statutory authority does not prohibit the Navy from rescinding her retirement and allowing her to continue service as an active drilling reservist.

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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 Regulations, 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.

11/17/2022

[REDACTED]
Executive Director
[REDACTED]