



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

[REDACTED]
Docket No. 5237-22
4979-20
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], USMC, XXX-XX [REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) MCO 6110.3A, Marine Corps Body Composition and Military Appearance Program
(c) MCO 1040.31, Enlistment Retention and Career Development Program
(d) MCO 5000.12F, Marine Corps Policy Concerning Parenthood and Pregnancy
(e) MARADMINS 135/19, subj: Marine Corps Temporary Early Retirement Authority (TERA) Program, dtg 042225Z MAR 19
(f) MARADMINS 677/17, subj: January 2018 Promotions for Staff Noncommissioned Officers (SNCO) and February 2018 Planned Promotions for SNCOS, dtg 131535Z DEC 17
(g) MARADMINS 302/20, subj: Manpower Force Shaping in Support of Force Design Phase One, dtg 211140Z MAY 20
(h) MCO 1610.7A, Performance Evaluation System (Short Title: PES)
(i) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 June 2018

Encl: (1) DD Form 149 (with attachments), 8 July 2020
(2) DD Form 149 (with attachments), 10 September 2020
(3) BCNR Letter [REDACTED] Docket No: 4979-20, 16 June 2021
(4) Complaint, in the case of [Petitioner] v. *The United States of America*, in the United States Court of Federal Claims, Civil Action No. [REDACTED], filed 3 August 2021
(5) Order, in the case of [Petitioner] v. *United States*, in the United States Court of Federal Claims, No. [REDACTED], filed 17 June 2022
(6) DD Form 149 (with attachments), 16 July 2022
(7) [REDACTED] Memo, subj: Letter of Recommendation ICO [Petitioner], 3 August 2020
(8) [REDACTED] Memo, subj: Letter of Recommendation ICO [Petitioner], 3 August 2020
(9) Standard Form 600, Health Record – Chronological Record of Medical Care, 6 March 2017
(10) NAVMC 118(11), Administrative Remarks, 9 November 2017
(11) NAVMC 10835A, USMC Fitness Report, FITREP ID# [REDACTED]
(12) Master Brief Sheet, 30 March 2021
(13) ODSE Data Sheet – Careerist Active Duty Reenlistment, [Petitioner], 29 June 2020
(14) TFRS- [REDACTED] Screen Shot, created 25 August 2019

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- (15) NAVMC 11537 (Excerpt), 23 September 2020
- (16) TFRS [REDACTED] Screen Shot, created 24 September 2020
- (17) NAVMC 118(11), Administrative Remarks, 16 December 2020
- (18) NAVMC 10274, Administrative Action, 17 December 2020
- (19) DD Form 214
- (20) NAVMC 118(11), Administrative Remarks, 10 May 2010
- (21) HQMC Memo 5420 MMEA, subj: Comments and Recommendations in the case of [Petitioner], 4 October 2022
- (22) Petitioner's Counsel Letter, subj: Docket No. 5237-22, [Petitioner] Responses to Advisory Opinion, 10 November 2022

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that her record be corrected by removing her assignment to the Marine Corps' Body Composition Program (BCP), a "Page 11" counseling entry documenting her assignment to the BCP; and an adverse fitness report (FITREP) for the reporting period 1 January 2017 to 31 December 2017 also documenting her assignment to the BCP.¹² She also requested that her date of rank to Gunnery Sergeant (GySgt) be backdated to 1 January 2018, which is the date that she would have been promoted but for her assignment to the BCP. On 28 May 2021, the Board denied Petitioner's request for relief in Docket No. 4979-20.³ See enclosure (3). On 3 August 2021, Petitioner filed suit in the United States Court of Federal Claims (COFC), complaining that she was discriminated against based upon her sex in violation of the Civil Rights Act of 1964; that she was improperly placed in the BCP since reference (b) specifically authorizes temporary medical exemptions and requires Marines who gain weight due to an underlying medical condition to be evaluated by an authorized medical provider;⁴ that she was denied a fair opportunity for reenlistment consideration due to the insertion of erroneous derogatory records pertaining to her entry into the BCP and the delay in submission of her reenlistment request by 81 days in violation of reference (c); that she was discriminated against because the provisions of reference (d), which provide that weight standards exceeded for 12 months after the date of birth are not to be cause for adverse FITREPs or evaluations, was not in effect during her post-partum

¹ Petitioner supplemented her original application on 10 September 2020 with a letter from her medical provider. See enclosure (2).

² Petitioner contended in enclosure (1) that she was unfairly assigned to the BCP due to extenuating circumstances concerning her infant's health. Specifically, she asserted that the diet and exercise plan recommended by her child's medical provider in order to facilitate the child's recovery from an early failure to thrive delayed her return to compliance with the Marine Corps' weight and body composition standards and resulted in her unfair assignment to the BCP. She further contended that she was "punished for prioritizing [her] child's health which is contradictory to the Commandant of the Marine Corps' guidance." Finally, she asserted her belief that she "should never have been assigned to BCP and was failed by previous leadership in recognizing the extent of [her] child's and [her] own medical complications."

³ The Board denied her request based upon the fact that there was more than 12 months between the birth of her child and her assignment to the BCP, which was greater than the post-partum guidance both in effect at the time and since revised in references (b) and (d). The Board also noted that Petitioner failed to communicate her concerns regarding her child's health to her chain of command in finding insufficient evidence that she was punished for prioritizing her child's health or that she was failed by previous leadership in recognizing the extent of her child's and her own medical complications.

⁴ This authorization was not in effect when her nine-month post-partum exemption from the Marine Corps' weight and body composition standards expired and her assignment to the BCP became mandated by reference (b).

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period and because the adverse information in her record was maintained even after the publication of this new standard; that the Marine Corps arbitrarily and contrary to law denied Petitioner consideration for retirement under the Temporary Early Retirement Authority (TERA) by stating that her denial was not due to force shaping efforts;⁵ and that the Board's denial of her requested relief in Docket No. 4979-20 was arbitrary.⁶ See enclosure (4). This complaint alleged numerous facts favorable to Petitioner's claim and made several contentions which were not alleged or made in her application to the Board in Docket No. 4979-20, to include the statements made in enclosures (7), (8) and (15).⁷

2. On 17 June 2022, Petitioner filed an unopposed motion to stay all proceedings in her case before the COFC to allow for further proceedings before the Board based upon newly discovered evidence. By order dated 17 June 2022, the COFC remanded the Petitioner's case to the Board for reconsideration in light of the newly discovered evidence. Petitioner was provided 30 days to file her request for reconsideration with the Board. See enclosure (5). On 16 July 2022, Petitioner submitted enclosure (6) to Board with the new evidence pursuant to reference (a) and enclosure (5), requesting reconsideration and set-aside of Docket No. 4979-20; the correction of her military records to reflect that she continued to serve and was not discharged on 10 February 2021; the removal from her records of all derogatory entries related to the BCP; back pay, allowances, and benefits; and any other relief that the Board may deem just and fair under the circumstances.⁸ In the alternative, she requested to be retired under the TERA program. Petitioner contended that the "[n]ew and outcome-alternating evidence demonstrates that [she] was separated from the U.S. Marine Corps in violation of [reference (c)]," and that her rights were violated under references (b) and (d). The new evidence were Total Force Retention System (TFRS) notes (enclosures (14) and (16)) which documented the bases for the recommendations made by Marine Corps screeners regarding her reenlistment requests, and which indicated that Petitioner received counseling statements on 10 May 2015 for an alcohol-related incident and suicidal ideations, and on 9 November 2012 for a BCP assignment, which she never actually received.⁹ The entries on these TFRS notes also reflected the opinions of

⁵ Reference (e) provided that Marines who are denied reenlistment due to force shaping needs may be eligible to apply for the TERA program.

⁶ Petitioner asserted that the Board erroneously concluded that Petitioner did not coordinate with her chain of command when in fact Petitioner had notified her immediate supervisor and the commanding officer who placed her on the BCP acknowledged that the command should have consulted more closely with her medical providers. She also asserted, erroneously, that the Board failed to recognize that her child failed to thrive and that she was specifically directed to consume more calories so that she could breast feed her daughter for approximately 12 months after her birth, and ignored evidence of discrimination due to her pregnancy and post-pregnancy complications. Petitioner made no such allegation in her application to the Board in Docket No. 4979-20, so the Board had no reason to address these contentions.

⁷ Among the facts alleged in Petitioner's complaint to the COFC which were not raised to the Board in her original application were the failure of Marine Corps personnel to forward her reenlistment request with a strong favorable recommendation prior to her reassignment to a new command; that a Marine Corps flag officer had investigated the denial of her reenlistment request, and enthusiastically recommended her for reenlistment following this investigation; and that the commander who assigned Petitioner to the BCP wrote a letter recommending approval of Petitioner's reenlistment request in which he acknowledged failings of the command to have consulted with Petitioner's medical providers

⁸ Although dated 16 July 2022, enclosure (6) was not received by the Board until 25 July 2022.

⁹ This assertion was false. While the note in enclosure (14) misstated the date on which she received the subject counseling statement, Petitioner's record does in fact include an entry dated 10 May 2010 wherein she was counseled for exercising a lack of judgment on 8 May 2010 for failing to report that one of her junior Marines

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certain screeners that Petitioner's training ratings were below average, despite Petitioner's contention that reference (f) does not consider training as a prerequisite for reenlistment; and that Petitioner was less competitive than others, despite the fact that another Marine ranked below Petitioner was allowed to reenlist. Finally, entries on the TFRS notes blamed Petitioner for being in the BCP, but recognized that revisions to Marine Corps policy "may have prevented" Petitioner from being assigned to BCP due to post-partum complications. Also provided to the Board for the first time were the statements referenced in enclosure (4) from Petitioner's former commander and executive officer which acknowledged the command's failure to adequately consult with her medical providers before placing her in the BCP and recommended her reenlistment, and the endorsement of Petitioner's commanding general on her request for reconsideration of her initial reenlistment denial. See enclosures (7), (8), and (15).

3. The Board reconsidered Petitioner's allegations of error or injustice in light of the newly-discovered evidence on 17 November 2022 and, pursuant to its regulations, determined the corrective action indicated below should be taken Petitioner's naval record. The names and votes of the Board members will be provided upon request. Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

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

a. Petitioner's second child was born on [REDACTED]. On 6 March 2017, soon after Petitioner resumed regular physical training, the child was diagnosed with a failure to thrive (FTT) due primarily to insufficient caloric intake. As a result, Petitioner was advised by her child's medical provider to increase the frequency of the child's breast feeding sessions, which necessitated an increase in her own caloric intake. See enclosure (9).

b. As a result of this increased caloric intake, Petitioner remained out of compliance with the Marine Corps' body composition standards beyond the nine-month post-partum exemption from those standards which was then in effect per references (b) and (d). On 9 November 2017, more than 12 months after the birth of her child, Petitioner was assigned to the BCP. At the time of her assignment to the BCP, she indicated her intent to make a statement in response to this assignment, but the record reflects no evidence that she made such a statement. See enclosure (10).

c. On 23 January 2018, Petitioner received her annual fitness report (FITREP) for the reporting period 1 January 2017 to 31 December 2017. While the narrative comments regarding her performance were generally favorable, the FITREP was deemed to be adverse due to the

informed her that he had an alcohol-related incident and made suicidal ideations. Petitioner acknowledged this counseling statement at the time and elected not to make a statement in rebuttal. See enclosure (20). While the shorthand note regarding this entry cited in enclosure (14) could be read to imply that Petitioner herself had the alcohol-related incident and suicidal ideations, the person who made the entry clearly reviewed the entry and was aware of its contents in making his or her recommendation. It is also obvious that the note simply misstated the dates that enclosures (10) and (20) were issued (i.e., 9 November 2017 vice 9 November 2012, and 10 May 2015 vice 10 May 2010).

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directed comments regarding her assignment to the BCP.¹⁰ Petitioner acknowledged her ratings on 7 February 2018, and provided a statement in response.¹¹ On 3 April 2018, Petitioner's Reviewing Officer (RO), who was the commander who placed Petitioner on the BCP and the author of enclosure (7), confirmed the adverse nature of the FITREP, but provided generally favorable comments to the effect that Petitioner has taken full responsibility and has been working proactively to be removed from the program while praising her performance of duty and capabilities. He also recommended Petitioner's "retention, promotion and assignment to an operating forces unit in a GySgt billet once [Petitioner] successfully completes her current assignment to the [BCP]." See enclosure (11).

d. Per reference (f), Petitioner had an anticipated promotion date to GySgt of 1 January 2018. However, she was not allowed to promote until her removal from the BCP. After losing

¹⁰ Reference (h) mandated a directed comment for assignment to the BCP, and characterized such entries as adverse when the BCP assignment not due to medical reasons. In accordance with reference (h), block A.5.a. was marked on the FITREP, indicating that it was adverse. The narrative explanation for this marking was that Petitioner "was assigned to the [BCP] during this period. The Reporting Senior (RS), who was Petitioner's executive officer and the author of enclosure (8), "recommend[ed] that [Petitioner] not be consider for promotion with contemporaries. [Petitioner] is selected for GySgt but will not promote until she is removed from the BCP program." Finally, the RS gave Petitioner the lowest rating in block F.3. (Leadership – Setting the Example). In the justification narrative, he stated the following:

[Petitioner] was placed on the [BCP] for being out of weight/body fat standards after the birth of her child. Her child was failing to thrive when nursing as [Petitioner] started her post-partum PT program and this slowed [Petitioner's] attempts to lose weight without compromising the health of her newborn child. This was not communicated to the command and she was returned to full duty without voicing her concerns WRT the fact that her child's health condition complicated her wt loss efforts.

¹¹ Petitioner's statement was as follows:

I take full responsibility for my actions and concur with the adverse nature of this report. I made the decision to put my child's health and well-being above my own and, consequently, my career.

I gave birth to my daughter on [REDACTED]. I had my 6 week follow up on Dec 22, 2016 and was cleared to start PTing at my own pace. I began PTing regularly after the new year and, shortly after, noticed a reduction in my milk production and quality (fat content of milk). I didn't think much of it until I took my daughter to her three month check-up on Jan 30, 2017 and she was diagnosed as "failure to thrive". At that point, I realized that I needed to change my routine to better care for my daughter. I met with a nutritionist at the Camp Foster Naval Hospital and was recommended to switch to a higher carbohydrate and natural fat diet and also reduce the amount of PT I was doing. This new diet and exercise plan resulted in some weight gain and the inability to lose weight. I understood the risk I was taking for my career in the Marine Corps, but ultimately, I choose [sic] the health of my child over my own health and weight.

At the end of my nine month postpartum period in August 2017, I weighed 187 lbs. I kept thinking I'd be able to lose the weight in May after I stopped breastfeeding and switched to formula, but that was not the case. I had gained too much weight to the point that I wasn't sure on how or where to begin to lose it. I decided to hire a personal trainer. He helped me change my eating habits and set up a workout program for me. We would meet five times a week, three in a group setting and two one-on-one sessions. I was evaluated for the Marine Corps' [BCP] on September 1, 2017 and was officially assigned on Nov 9, 2017. I was 171 lbs/39% [body fat] at assignment and, as of Jan 26, 2018, I am 161 lbs/33% [body fat]. The max weight for 64" is 151 lbs/27% [body fat]. I have met my milestones each month according to the BCP calculations on healthy weight loss. I am fully committed to losing the last 10 lbs before I am reevaluated on May 8, 2018. Once again, I take full responsibility for my actions and concur with the adverse nature of this report.

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the requisite weight, Petitioner was removed from the BCP on 9 May 2018, and promoted to GySgt effective 1 June 2018. See enclosure (12).

e. On 25 August 2019, Petitioner submitted a request for reenlistment.¹² On 29 June 2020, that request was disapproved by Headquarters, Marine Corps (HQMC), based on Petitioner's failure "to demonstrate the high standards of leadership, professional competence, and personal behavior required to maintain the prestige and quality standards of the Marine Corps." Among the comments which contributed to the decision not to approve Petitioner's reenlistment request was that her record included a 9 November 2012 "Page 11" entry for a BCP assignment; and a 10 May 2015 counseling statement for an alcohol-related incident, making suicidal ideations, and failing to report it to the chain of command. The record also reflects a lack of unanimity regarding Petitioner's request. At least one individual who reviewed Petitioner's request recommended approval of her reenlistment request, but the majority recommended that it be disapproved for a variety of reasons, to include limited "boatspace" remaining in her military occupational specialty (MOS), the materials in her record described immediately above, and her generally non-competitive record. HQMC directed that Petitioner be assigned an RE-3C reentry code,¹³ and indicated that HQMC would reconsider its decision if the command determines that there is information that was not reviewed which may have a bearing on the decision for no further service.¹⁴ See enclosures (13) and (14).

f. On or about 24 September 2020, Petitioner requested reconsideration of the decision to deny her continued service.¹⁵ She submitted the following recommendations and endorsements with this request:

(1) By memorandum dated 3 August 2020, the commander who placed Petitioner on the BCP strongly recommended that her reenlistment request be approved. He explained that the command felt it had no choice but to assign Petitioner to the BCP under the circumstances in accordance with reference (b) and that he wanted to ensure that there was no perceived or actual preferential treatment given to a SNCO on the battalion staff relative to the dozens of junior Marines on the BCP,¹⁶ and that the command failed to recognize that some cases, like Petitioner's, require special handling. He stated that, in retrospect, "we should have pursued a more thorough discussion with [Petitioner's] medical providers, preferably at the time of her daughter's diagnosis, to determine a safe weight loss profile for [Petitioner] and documented it in her medical records and through formal counseling. We lacked both the foresight to identify this

¹² Petitioner end of active service (EOAS) date was 10 August 2020.

¹³ Per reference (c), an RE-3C reenlistment code is assigned when directed by the Commandant of the Marine Corps (CMC) or when the Marine is not eligible for reenlistment and the disqualifying factor is not covered by any other code. When such a reenlistment code is assigned, the CMC must approve any future reenlistment.

¹⁴ Paragraph 15 of enclosure (1) to reference (c) provides that HQMC will reconsider any decision to deny further service, but that such requests must be endorsed by the Marine's commanding general and an endorsement from the next higher commander and amplifying information not presented in the initial request are also required. Enclosure (15) constitutes the endorsement of Petitioner's commanding general for her reconsideration request.

¹⁵ On 31 July 2020, Petitioner requested a six-month extension of her enlistment beyond 10 August 2020 to facilitate her transition. This extension adjusted Petitioner's EOAS date to 10 February 2021.

¹⁶ The version of reference (b) in effect at the time granted a nine-month post-partum exemption period to meet body composition and military appearance standards. This standard was changed in the current version, effective 23 February 2021, to expand the period of post-partum exemption to 12 months.

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problem ahead of time and the imagination to recognize it as outside the scope of the spirit and intent of [reference (b)].” Finally, he expressed his strong belief that Petitioner “is worthy of a full, four-year reenlistment,” and that he had seen far less deserving Marines with more damaging adverse material in their records receive two-year enlistments “for further observation” (FFO). Accordingly, he commented that Petitioner should receive at least a two-year FFO reenlistment to ensure that she is able to meet the high standards expected of a GySgt of Marines. See enclosure (7).

(2) Also by memorandum dated 3 August 2020, Petitioner’s former executive officer, who was her supervisor at the time of her assignment to the BCP and the RS for her adverse FITREP, recommended that Petitioner be allowed to reenlist in the Marine Corps. He also stated that Petitioner was placed on the BCP based upon version of reference (b) in place at the time, and that she would not have been so assigned today based on reference (d).¹⁷ Finally, he stated that if Petitioner’s situation had happened today, he would not have recommended that she be placed on the BCP. Rather, he would have encouraged Petitioner and the commander to speak to her provider about an extended assignment to allow for her daughter to meet development milestones and to allow Petitioner to lose the weight she maintained while on the medical provider’s recommended diet. This memorandum reiterated the suggestion of Petitioner’s former commander in enclosure (7) that Petitioner be granted a two-year FFO reenlistment at a minimum. See enclosure (8).

(3) On 23 September 2020, Petitioner’s commanding general “enthusiastically” recommended Petitioner for reenlistment after reviewing her record in detail multiple times. In the event that her reenlistment request was disapproved, the commanding general strongly recommended Petitioner for TERA and/or full separation pay. See enclosure (15).

See enclosure (16).

h. On 16 December 2020, Petitioner was notified that her second request for reconsideration was disapproved by HQMC. The record for this decision reflects consideration of enclosures (7), (8), and (15), and no consideration of the 9 November 2012 and 10 May 2015 entries discussed in paragraph 4e above. The record again reflects a lack of unanimity among the Marines who screened her reenlistment request, but a significant majority sentiment that it should be disapproved based upon the limited “boatspace” for her MOS and her generally noncompetitive record.¹⁸ Those screeners who recommended approval noted the timing of Petitioner’s request, and that the “Commanding General’s Retention Program” guidelines, which were pending imminent release, would possibly provide Petitioner a “boatspace.” The screening

¹⁷ Reference (d), which went into effect on 13 April 2020, provides Marines, health providers and commanders with more flexibility than did the previous order, and allows for the type of situation faced by Petitioner in 2017. Specifically, paragraph 7a(1)(d) of Enclosure (2) to reference (d) provides that “[p]ost-partum Marines must be evaluated by [health care providers] and formally assigned to a period of light or limited duty if physical fitness exemption is required beyond 12 months.” Note: The 12-month standard was changed from nine months by the change to reference (d) dated 10 March 2021.

¹⁸ The record of review of Petitioner’s reenlistment request at HQMC reflects commentary that Petitioner ranked above only 16.7 percent of her peers in her RO summary, but above only 4.2 percent of her peers in the most recent ODI data. It also reflected that Petitioner has “been marked in the lower third by 100% of the RS reports at the present grade,” and that she “was ranked 0% in the upper third in the previous grade.”

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comments specifically disavowed her claims of gender and/or MOS bias. Contrary to that which was assigned after her first unsuccessful reenlistment request, HQMC assigned Petitioner a RE-1C reenlistment code.¹⁹ See enclosures (16) and (17).

i. On 17 December 2020, Petitioner requested early retirement pursuant to the TERA. In her request, she asserted that the reduced requirement for staff noncommissioned officers (SNCO) in her MOS due to the divestiture of three [REDACTED] companies directly affected her reenlistment eligibility. See enclosure (18).

j. On 10 February 2020, Petitioner was honorably discharged upon the completion of her required active service. She was assigned a reentry code of RE-1C. See enclosure (19).

k. As stated above, the Board denied Petitioner's previous request for relief in Docket No. 4979-20 on 28 May 2021. See enclosure (3). Her application in Docket No. 4979-20 did not include her arguments made herein that she was denied due process and fair consideration during the reenlistment process or several of the other violations and injustices alleged in enclosure (6). It also did not include enclosures (7), (8), or (15). Rather, she stated that relief was warranted only on the basis that her assignment to the BCP was unfair under the circumstances since those circumstances were not contemplated by the Marine Corps regulation in effect at the time, and that her former command failed her by not recognizing the extent of her child's and her own medical complications. See enclosures (1) and (3).

l. By memorandum dated 4 October 2022, the Deputy Head, Enlisted Assignments Branch at MMEA, provided an advisory opinion (AO) for the Board's consideration. This AO noted that Petitioner's reenlistment request was submitted during the Fiscal Year (FY) 2020 submission window as tier three,²⁰ and was screened on the FY 2020 Fast Filling (FFM) MOS boards. The FFM Board found Petitioner to be less competitive than her peers resulting in her being designated as an alternate for a "boatspace."²¹ Ultimately, her reenlistment request was disapproved due to all available boatspaces being filled by Marines who the board deemed to be more competitive. With regard to the references to Petitioner's BCP assignment, the AO noted that the date cited on the TFRS note provided merely mislabeled the date of the counseling statement assigning her to the BCP, as such scanned documents can be difficult to read. It further noted that this mistake was mentioned by only one of the reviewers, and was less likely to carry much weight due to the due process of the FFM boards.²² Finally, with regard to the recommendation made by Petitioner's commanding general, the AO noted that such requests are adjudicated by a flag officer of equal or higher rank. In Petitioner's case, the Director of Manpower Management (DMM), who was then of an equal rank to Petitioner's commanding

¹⁹ Per reference (b), a RE-1C reenlistment code is assigned when a recommended and eligible career Marine meeting generally acceptable standards is denied further service. No waiver is required for a Marine holding this reenlistment code to be considered for reenlistment.

²⁰ A Tier 3 submission indicates that Petitioner is recommended for retention with reservation. The rating criteria is that the Marine meets basic retention requirements, but the commander making the recommendation has reservations regarding the Marine's career potential.

²¹ According to the AO, Petitioner's record was screened along with those of her peers seeking reenlistment by a diverse and impartial board consisting of two Career Planners (E-7), three Monitors (E-8/E-9), a Unit Head (O-3/O-4), and a Retention Officer (O-3) in the HQMC Manpower Management Enlisted Assignments (MMEA) branch.

²² The FFM Board process requires members to screen each Marine separately.

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general but is now of a higher rank, screened Petitioner's request and record in order to make a clear and objective decision. The DMM ultimately disapproved Petitioner's request based on the information in her naval record and the reenlistment request.²³ The AO commented that although Petitioner's previous chain of command indicated that they should not have placed her on the BCP, retention decisions are based on the information present in a Marine's record at the time the retention request was considered. If Petitioner's record of assignment to the BCP and corresponding adverse FITREP had been removed, she would have been more competitive with her peers and her reenlistment request likely would have been approved. With regard to Petitioner's TERA request, the AO noted that such requests must meet one of the following criterion to be considered in accordance with reference (e): (1) TERA in conjunction with waiving Physical Evaluation Board (PEB) findings; (2) Marines receiving an administratively closed/denied reenlistment request due to force shaping needs; or (3) TERA in conjunction with hardship. Petitioner's denial of reenlistment was not due to "force shaping," as she claimed, but rather due to keen competition for boatspace amongst her peers.²⁴ See enclosure (21).

m. By letter dated 10 November 2022, Petitioner, through counsel, provided a response to the AO discussed in paragraph 4l above. This response reiterated Petitioner's previously made arguments for relief, and provided the following responses to specific comments made in the AO:

(1) In response to the AO comment that the FFM Board found Petitioner to be less competitive than her peers, Petitioner's counsel responded that it found her to be less competitive because it attributed to Petitioner's adverse records that did not exist.²⁵ Petitioner's counsel also reiterated that another Marine who was considered to be less competitive than Petitioner was selected for reenlistment by direction of the DMM, which suggests that had Petitioner's true records been properly considered without attributing her non-existent adverse information, she likely would have been retained on active duty.

(2) In response to the AO comment that the offending counseling statement was mentioned erroneously by one MMEA screener, and was less likely to carry as much weight due to the due process of the FFM Boards, Petitioner's counsel contends that the statement was mentioned throughout the TFRS notes.²⁶ As such, Petitioner's counsel contends that the information was given significant weight and was material to the decision not to reenlist Petitioner. As such, she was denied due process in the decision to deny her reenlistment request.

²³ The information in Petitioner's naval record cited by the AO as having been relied upon by the DMM included the adverse FITREP for BCMP, the counseling statement assigning Petitioner to the BCP, below average ratings from both the RS and RO, Petitioner's failure to complete professional military education (PME) requirements, and below average training. These factors ultimately made Petitioner less competitive than her peers for the limited number of boatspaces available.

²⁴ Per reference (g), "force shaping" authorities applied only for Marines in designated MOS's, which did not include Petitioner's MOS.

²⁵ Petitioner's counsel again asserts that the counseling statements attributed to her in 2012 and 2015 do not exist. As previously noted, these comments are very clearly references to counseling statements that do, in fact, exist in Petitioner's record, and the screener who cited them merely listed the wrong year in the date of the counseling statements. Petitioner personally acknowledged both of these counseling statements on 10 May 2010 and 9 November 2017 respectively (see enclosures (10) and (20)).

²⁶ Petitioner's counsel cites to six statements in the TFRS purported to support this contention, but only three of the statements referred to the counseling statement.

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

Petitioner's counsel also notes that Petitioner was originally assigned a disqualifying RE-3C code, which suggested that the original decision to deny her reenlistment was based upon this erroneous information.

(3) In response to the AO comment that the dates on the counseling statements were erroneous, Petitioner's counsel asserts that the AO recommends that Petitioner's reenlistment be reassessed if the references to her 2017 BCP assignment are removed by the Board. Petitioner's counsel also notes that the TFRS notes recognized that revisions to Marine Corps policy in April 2020 "may have prevented [Petitioner] from being assigned to BCP due to post-partum complications" and that Petitioner "should not have been put on BCP nor received an adverse FITREP for her particular situation." Without consideration of the two counseling statements that Petitioner's counsel insists to be inaccurate and the 2017 BCP assignment, Petitioner's reenlistment competitiveness would dramatically improve.

(4) In response to the AO comment that the DMM screened Petitioner's reenlistment request and record in order to make a clear and objective decision, but ultimately disapproved her request based on the information in her record, Petitioner's counsel asserted that the DMM failed to actually screen her record because if he had done so he would have realized that such denial "would show a lack of support for the yet to be released [Commanding General's Retention Program that allowed commanding generals to select Marines for reenlistment] and go against [General Officer] direction." He also suggested that the DMM would have recognized that Petitioner was more competitive than the one other Marine that he had directed to be retained, and that the 2017 BCP entries were improper. Finally, Petitioner's counsel asserts that the AO provides "no reference or enclosure indicating that the [DMM] carefully reviewed [Petitioner's] entire service record to make 'a clear and objective decision.' Instead, the [TFRS] notes indicate that he merely allowed [Petitioner] more time to out-process with separation pay [after the [Inspector General] and [Sergeant Major] of the Marine Corps Office became involved)." ²⁷

(5) In response to the AO comment that Petitioner's denial of reenlistment was due to the keen competition in her MOS and not to "force shaping" which would have made her eligible for TERA consideration, Petitioner's counsel noted that a comment in the TFRS notes stated that Petitioner was TERA eligible. He also disputed the notion that Petitioner was denied reenlistment due to the keen competition, insisting that she was denied such opportunity due to the erroneous information in her record and that she was more competitive than at least one other Marine.

²⁷ Petitioner's counsel contended that Petitioner's enlistment was extended to 10 February 2021 only after she filed an Inspector General (IG) complaint and involved the Officer of the Sergeant Major of the Marine Corps. Petitioner's counsel provided a letter from the Marine Corps IG, dated 30 July 2020, indicating that her enlistment had been extended since she made her complaint on 20 July 2020. Contrary to the contention of Petitioner's counsel, the evidence does not reflect that it was only this complaint and the involvement of the Sergeant Major of the Marine Corps which resulted in the extension of her enlistment to 1 February 2021. The evidence actually reflects that Petitioner did not request the extension of her enlistment until 31 July 2020, 11 days after she submitted her IG hotline complaint and after her enlistment had already been extended. This suggests that the Marine Corps was not hesitant to extend her enlistment for a short period following her initial denial of reenlistment, especially since such extensions are provided for in reference (c).

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

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

See enclosure (22).

n. In addition to responding directly to the above referenced comments in the AO, Petitioner's counsel alleged a violation of 10 U.S.C. § 1556 since he was not provided a copy of the enclosures cited in the AO. These enclosures consisted of enclosures (6), (14), and (16) referenced herein, each of which were documents provided to the Board by Petitioner herself, and references (e), (f), and (g). References (e), (f), and (g) are easily accessible to Petitioner, and purely administrative in nature.²⁸ Accordingly, the Board found no merit in this complaint.²⁹ See enclosure (22).

o. Petitioner's counsel concludes his response to the AO by asserting that it concedes that erroneous information was considered during Petitioner's reenlistment processing, and further recommends that if the Board were to remove the derogatory information from her record that it should allow her to request reenlistment consideration pursuant to FY 2020 criteria.³⁰ He also asserts that Petitioner's chain of command recognizes that the 2017 BCP information was improper and that her commanding general recommended her for reenlistment. Finally, Petitioner's counsel asserts that the AO downplays the magnitude of the errors despite clear evidence in the TFRS notes that the errors denied Petitioner of proper reenlistment consideration. See enclosure (22).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined that partial equitable relief is warranted in the interest of justice.

The Board found no material error in Petitioner's assignment to the BCP in November 2017. At the time, Petitioner's assignment to the BCP was mandated under the circumstances. The version of reference (b) which was in effect at the time mandated the assignment to the BCP of a Marine not in compliance with the weight and body composition standards. Further, the post-partum exemption from the body composition standards was limited to nine months following the birth of a child. Petitioner was not assigned to the BCP until more than 12 months after the birth of her child despite her noncompliance with the body composition standards. As such, even under the current standard Petitioner would be required to be assigned to the BCP absent a temporary medical exemption from such assignment made by a Board Certified or Board Eligible Military Physician (BCBEMP).³¹ It was only after Petitioner's mandated assignment to the BCP that the regulation was changed to provide for the possibility of a medical exemption

²⁸ Per 10 U.S.C. § 1556(b)(4), correspondence that is purely administrative in nature is exempted from the prohibition against ex parte communications. References (e), (f), and (g) are literally "Marine Corps Administrative Messages."

²⁹ Petitioner's counsel also noted that the AO referred to "references (2) and (3)," but did not actually list references (2) or (3) as the references in the AO were designated by letter. Petitioner's counsel suggests that the AO likely meant to reference "enclosures (2) and (3)." The Board agrees with this conclusion, but continues to find no issue in the failure to provide Petitioner with a copy of documentation originally provided by Petitioner herself.

³⁰ The Board found this to be a gross misstatement of the AO's findings and recommendation, as the AO made no such concession.

³¹ This change went into effect with Change 1 to reference (b), effective 12 October 2017, which was beyond the nine-month post-partum standard in effect at the time.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

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

from assignment to the BCP under circumstances like those experienced by the Petitioner. While Petitioner's former chain of command showed exceptional leadership and character by accepting responsibility for Petitioner's assignment to the BCP in enclosures (7) and (8) in their effort to enhance her opportunity for reenlistment after her first denial, the fact of the matter is that they did not have discretion in this regard. Petitioner's medical provider also provided a statement in support of Petitioner's reenlistment effort suggesting that she should not have been assigned to the BCP due to the medical circumstances regarding her daughter's failure to thrive, but this assessment ignored the regulatory requirements in effect at the time. In addition to the fact that Petitioner's assignment to the BCP was mandated under the circumstances at the time in accordance with reference (b), the version of reference (h) in effect at the time mandated a directed comment in a FITREP the event of a formal assignment to the BCP and rendered such an assignment not the result of an underlying medical condition or disease as adverse.³² Accordingly, the Board found no error in Petitioner's assignment to the BCP in November 2017, or in the adverse FITREP that resulted from this assignment.

Given that Petitioner's chain of command was mandated to assign her to the BCP, and therefore also to render an adverse FITREP as a result of that assignment, it is difficult to characterize this action as unjust at the time it was executed. While Petitioner's decision to prioritize her child's health over her own career prospects was completely understandable and laudable, the command's compliance with the orders that they swore to obey was not an unjust act despite the effect that such compliance had in hindsight. The Board found that Petitioner contributed to the unfortunate outcome by failing to adequately inform her command of the reason for her inability to comply with the weight and body composition. Although Petitioner's commander admirably attempted to assume responsibility for his failure to pursue a more thorough discussion with Petitioner's medical providers before assigning her to the BCP in enclosure (7) in an effort to enhance her opportunity for reenlistment after her initial denial, enclosure (11) reveals that Petitioner had failed to communicate her situation to the command and that she was therefore returned to full duty. Given the lengths that Petitioner's command went to assist her reenlistment efforts and to praise her performance in what was otherwise an adverse FITREP, the Board found this comment in enclosure (11) to be very credible. The command could not reasonably have been expected to guess at the reason for Petitioner's inability to meet the weight and body composition standards and to know that there was any reason to consult with her medical providers absent Petitioner's candor. Accordingly, there was no injustice in Petitioner's assignment to the BCP at the time it was administered.

Despite finding no error or injustice in Petitioner's assignment to the BCP at the time that it was administered, the Board did find an injustice in the continued presence of her BCP assignment given the changes made to the Marine Corps policies since that assignment was made. Reference (b) was changed just weeks after her assignment to the BCP became mandated under the regulations in effect at the time upon the expiration of her nine-month post-partum exemption from the weight and body composition standards to provide for the possibility of a temporary medical exemption from the BCP by a BCBEMP. Further, references (b) and (d) were

³² The Board is not certain whether an assignment to the BCP under similar circumstances today would be considered adverse, as Petitioner's inability to meet the weight and body composition standards was the not result of her own underlying medical condition or disease, but rather that of her child. Regardless, however, the version of reference (b) at the time would not have provided for such a determination under Petitioner's circumstances.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

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

subsequently changed to extend the post-partum exemption period from nine to 12 months, so Petitioner would have remained exempt from assignment to the BCP when the possibility of a temporary medical exemption was created if the current post-partum exemption standard was in effect at the time. The letter from Petitioner's medical provider at enclosure (2) strongly suggests that her provider would have recommended that she receive a temporary medical exemption under the circumstances. While the Board has no way to know whether the author of the letter at enclosure (2) was himself a BCBEMP, the Board assumes him to have been so and has no reason to believe that such recommendation would not have been endorsed by a BCBEMP if he was not. Further, Petitioner's chain of command indicated at enclosures (7) and (8), which were not previously made available to the Board, that they would have supported and endorsed such a course of action if it had been an option. Reference (i) provides that "[c]hanges in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received, may be grounds for [exercise of the Board's equitable] relief [authority]."³³ It is very likely that Petitioner would never have been assigned to the BCP under the same circumstances today given the changes made to Marine Corps policy. Accordingly, the Board determined that the removal of references to Petitioner's assignment to the BCP is warranted in the interest of justice. To be clear, this determination is based upon the Board's equitable relief authority, and not based upon any determination that the original decision to assign her to the BCP was an error or unjust at the time.

Having determined that all references to Petitioner's assignment to the BCP should be removed, the Board also determined that Petitioner's date of rank to GySgt should be changed to 1 January 2018. It was only due to her assignment to the BCP, which would not be likely occur under similar circumstances today, that Petitioner's promotion to GySgt was delayed until 1 June 2018. Accordingly, the removal of all references to her BCP assignment justifies a change to Petitioner's effective date of rank to GySgt to reflect that which it would have been but for that assignment. Just as with the determination to remove the references to Petitioner's BCP assignment from her record, this determination is also based upon the Board's equitable relief authority and is not based upon any determination that the delay in her promotion was an error or unjust at the time that it was administered.

Even having found an injustice warranting relief in the Petitioner's assignment to the BCP given the subsequent changes to Marine Corps policies, the Board found no merit in Petitioner's contention that she was denied due process and fair consideration during the processing of her reenlistment requests. Petitioner received two thorough reviews for reenlistment consideration. After her first request was denied, she was permitted to request reconsideration with the endorsement and favorable recommendation of her commanding general, as required by reference (c). During the reconsideration of her reenlistment request, she had the opportunity to amplify her request with enclosures (7) and (8), which provided HQMC with context for the presence of the BCP assignment in her record. Both of Petitioner's reenlistment requests were screened by numerous staff non-commissioned officers and officers within MMEA, as required by paragraph 14 of enclosure (1) to reference (c). During each screening, there were favorable

³³ Reference (i) provides that its "guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds."

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

recommendations included among the unfavorable recommendations, which suggests that each Marine who screened her request gave it individual attention and rendered a recommendation based upon their own individual judgment. Ultimately, the proper denial authority disapproved each of her requests. In the case of her reconsideration request, this denial authority was the DMM, who was a flag officer.³⁴ This reflects the process due for every career Marine reenlistment request.

Petitioner's contention that erroneous information was considered during the reenlistment process was inaccurate. It was obvious to the Board that the references to counseling statements issued on 10 May 2015 and 9 November 2012 in the TFRS notes were scrivener's errors referencing counseling statements that actually were issued on the same dates in 2010 and 2017 respectively. Petitioner did, in fact, receive a counseling statement on 10 May 2010 for demonstrating a lack of judgment by failing to report that one of her junior Marines informed her that he had an alcohol-related incident and made suicidal ideations. See enclosure (20). She acknowledged this counseling statement and elected not to make a statement. The reviewer of Petitioner's reenlistment request who referenced this counseling statement clearly reviewed its contents, so the manner in which it was referenced in the TFRS notes which could suggest that it was Petitioner was harmless. Petitioner also received a counseling statement on 9 November 2017 upon her assignment to the BCP. See enclosure (10). There is no evidence to suggest that anyone who reviewed Petitioner's reenlistment request considered the references to counseling statements in 2012 and 2015 to be duplicative with the counseling statements actually received in 2010 and 2017.

Even if the Marines who reviewed Petitioner's reenlistment application considered inaccurate information (for which there is no evidence), such error would have been corrected when Petitioner's reenlistment request was reconsidered. There was no reference to the materials that Petitioner inaccurately claims to be erroneous in the TFRS notes relating to the denial of her reconsideration request for reenlistment (see enclosure 16).

Petitioner's contention that "the U.S. Marine Corps" provided arbitrary and capricious reasons for denying Petitioner's reenlistment was entirely without merit. The reasons for this decision that Petitioner attributes to the Marine Corps were actually the individual bases justifying the recommendations made by each of the numerous Marines who screened her reenlistment request. None of them constituted the official position of the United States Marine Corps. Likewise, none of them were arbitrary and capricious. The Board reviewed every comment made in the TFRS notes in enclosures (14) and (16), and found each to be a rational basis for its referenced recommendation and fully supported by the evidence. It was the responsibility of each of the Marines who screened Petitioner's reenlistment request to make a recommendation and provide a justification for that recommendation. Petitioner's mere disagreement with the assessments made by these Marines does not render their conclusions as arbitrary and capricious.

Petitioner's contention that she met all of the reenlistment prerequisites in reference (c), and that her denial of reenlistment was therefore arbitrary and capricious, is without merit. While it is true that Petitioner satisfied all of these prerequisites, this does not guarantee that a reenlistment

³⁴ The Board found no merit in or support for the assertion of Petitioner's counsel in enclosure (22) that the DMM failed to review her request.

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

request will be granted. Rather, these prerequisites are the minimal requirements that must be met to be eligible for reenlistment consideration absent a waiver. Petitioner's contention that it was arbitrary and capricious for one of the Marines who reviewed Petitioner's reenlistment request to recommended disapproval based upon that Marine's determination that she was not among the "best and brightest" and that she had "peaked" was without merit. Paragraph 4a(2) of reference (c) provides that "the commitment of [Marine Corps] commanders and all Career Planners to maintain the integrity of [the] force by continuing to reenlist the 'best and brightest' Marines into the career force" is inherent in the duty to manage the retention of highly qualified enlisted Marines to meet career forced MOS requirements. The Marine who entered this comment in the TRFS notes as justification for his/her recommended denial of her request did so pursuant to his/her duty to screen such records pursuant to paragraph 14 of enclosure (1) to reference (c), so it was entirely appropriate to base this recommendation upon his/her assessment that Petitioner's record did not reflect that she was among the best and brightest of her peers. There was also no error or injustice in suggesting that Petitioner's performance had "peaked," as it was the responsibility of the Marine who entered the comment to make such an assessment based upon review of Petitioner's record relative to her peers. The reliance upon such an assessment to justify his/her negative recommendation is consistent with the stated intent of reference (c) to reenlist the best and brightest enlisted Marines.

Petitioner's contention that the denial of Petitioner's reenlistment was arbitrary and capricious since the TFRS notes reflect that one Marine ranked below her was granted reenlistment by order of the DMM was also without merit. The Board has no way to know the circumstances which resulted in that Marine's reenlistment, but also has no reason to believe that approval of his reenlistment was improper. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that Marine Corps officials properly performed their functions. Accordingly, the Board presumes that the DMM had good reason for approving the unnamed Marine's reenlistment despite his relative lack of competitiveness by the board which rank ordered Petitioner's peers seeking reenlistment. This does not make the denial of Petitioner's reenlistment arbitrary and capricious, but rather suggests that each reenlistment request receives individual attention by the decision authority and that unique circumstances are taken into account. The Board also notes that while the evidence reflects that one Marine ranked below Petitioner in the order of merit list for reenlistment was ultimately approved for reenlistment, it also suggests that there were Marines determined to be more competitive than she was but who were also denied reenlistment.³⁵ It was apparent to the Board that Petitioner was denied reenlistment because her record was not competitive with those of her peers, and that the competition for the limited boatspace in her particular MOS was difficult.

Even with the equitable removal of Petitioner's BCP from her naval record, the Board found insufficient evidence of any error or injustice in the denial of Petitioner's reenlistment. As discussed above, there was no merit in Petitioner's contention that her due process rights were violated during the processing of her two reenlistment requests. Additionally, the Board was not convinced that Petitioner's reenlistment request would necessarily have been approved but for her assignment to the BCP. The Board did not question that this assignment was likely a contributing factor to the denial of Petitioner's reenlistment, but was not convinced that it was

³⁵ One of the comments in enclosure (14) indicated that Petitioner was the last alternate on the FFM Board.

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

the primary factor. In addition to her BCP assignment, the notes of the Marines who screened Petitioner's reenlistment requests in enclosures (14) and (16) reflect that Petitioner's RO and RS ratings in both her current and previous grade were mediocre; that Petitioner had not completed her PME requirements; and that her training ratings were below average. The record also reflects that Petitioner's MOS was particularly competitive, with limited boatspace available for reenlistment in Petitioner's grade. The Board simply found insufficient evidence to conclude that there was any error or injustice in the Marine Corps' decision to deny Petitioner's reenlistment request.

Having determined that there was insufficient evidence of any error or injustice in the Marine Corps' decision to deny Petitioner's reenlistment request, the Board found no basis to correct her record to reflect that she was not discharged upon her EAOS but continued to serve continuously thereafter. Absent an error or injustice in the decision to deny her reenlistment, there was also no error or injustice in Petitioner's discharge upon her EOAS on 10 February 2021. The Board's finding of no injustice in Petitioner's denial of reenlistment was influenced by the reenlistment code that she was assigned. A RE-1C reenlistment code permits a Marine to reenlist without need for a waiver. Accordingly, there is nothing to prevent Petitioner from again seeking reenlistment in the Marine Corps if she chooses to do so. Given the corrections directed herein, the decision made upon any such request would not be influenced by her previous BCP assignment. If Petitioner is approved for reenlistment under these circumstances, that would provide evidence that her previous denial may have been an injustice and she could then reapply to this Board for additional relief related to the gap created in her service. Absent such approval, however, the Board was unwilling to substitute its judgment for that of the Marines who actually compared Petitioner's record to that of her peers and determine that she was not among the best and brightest of the Marines warranting reenlistment in a highly competitive MOS.

Besides the injustice already identified above, the Board found no merit in Petitioner's contention that the Marine Corps committed numerous additional violations and injustices warranting relief. Specifically, Petitioner's contention that the Marine Corps violated reference (b) by assigning her to the BCP is without merit because reference (b) mandated such assignment at the time. Additionally, Petitioner's contention that her rights under reference (e) were violated because she was not allowed to balance her military service with family plans and responsibilities is without merit because the Marine Corps applied the requirements that were in place at the time. There was nothing arbitrary about the nine-month post-partum BCP exemption or Petitioner's assignment to the BCP after that exempt period – it was the regulatory mandate in place at the time. Further, Petitioner contributed to the unfortunate consequences of her decision to prioritize her child health by failing to communicate the reason for inability to comply with the weight and body composition requirements to her chain of command.

Finally, there was no error or injustice in the denial of Petitioner's TERA request. Reference (e) provides that TERA requests must meet one of the following criteria to be considered: (1) TERA in conjunction with waiving PEB findings; (2) Marines receiving administratively closed/denied reenlistment request due to force shaping needs; or (3) TERA in conjunction with hardship. Petitioner claims that her reenlistment was denied due to Marine Corps force shaping needs, but this contention is not supported by the evidence. The Marine Corps identified the MOS's that would be impacted by its force shaping authorities and tools in reference (g), and

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

Petitioner's MOS was not among them. The Board acknowledges Petitioner's contention that the number of billets in her grade and MOS were reduced due to the deactivation of three bridging companies, but this reflects a misunderstanding of what constitutes "force shaping" within the context of reference (e). A reduction in MOS "boatspace" does not equate to "force shaping." Petitioner was at no time eligible for consideration for early retirement pursuant to the TERA.

RECOMMENDATION:

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

That the 9 November 2011 "Page 11" counseling entry assigning Petitioner to the BCP (enclosure (10)) be removed from Petitioner's naval record.

That Petitioner's adverse FITREP for the reporting period 1 January 2017 to 31 December 2017 be removed from Petitioner's naval record.

That Petitioner's naval record be corrected to reflect her date of rank and effective date in the grade of GySgt as 1 January 2018. This includes issuance of a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) reflecting the corrected date of rank.

That Petitioner's naval record be scrubbed to identify and remove any material or entries making reference to Petitioner's assignment to the BCP. This includes, but is not necessary limited to, all information systems or database entries referencing or discussing Petitioner's BCP assignment or the removed materials.

If Petitioner elects to seek reenlistment in the Marine Corps after the corrections directed herein are applied to her record and is otherwise eligible for such consideration, then HQMC is directed to consider such request under the same criteria as was applied in 2020.

That the Defense Finance and Accounting Service (DFAS) conduct an audit of Petitioner's finance records to determine what, if any, pay and allowances may be due Petitioner as a result of the correction to her effective date in the grade of GySgt directed herein.

That no further corrections be made to 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 titled matter.

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

5. Pursuant to the delegation of authority set out SECNAVINST 5420.193, 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.

12/15/2022

X

[REDACTED]
Executive Director

Signed by: [REDACTED]