



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

██████████
Docket No. 6182-23
Ref: Signature Date

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Dear ██████████

This is in reference to your request for reconsideration of the previous decision of the Board for Correction of Naval Records [hereinafter referred to as the Board] in Docket No. 681-23. After careful review and consideration of all of the evidence of record, to include the new materials provided that were not previously considered, the Board continued to find insufficient evidence of any material error or injustice warranting relief. Accordingly, your application has been denied.

A three-member panel of the Board, sitting in executive session, reconsidered your application in light of the new material provided on 18 January 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board included your application, together with all materials submitted in support thereof; the case file for Docket No. 681-23, which included your original application and all material submitted in support thereof, as well as an advisory opinion (AO) provided by the Department of the Navy authority have cognizance over the subject matter of your request,¹ dated 23 May 2023, and your response thereto dated 24 May 2024; the AO provided by OPNAV N130D subject to your current reconsideration request, dated 9 November 2023;² relevant portions of your naval record; and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to its understanding of the issues involved in your case. Accordingly, the Board determined that a personal appearance was not necessary and considered your case based upon the evidence of record.

Factual Background. Following is the factual background of your case based upon relevant portions of your naval record and the matters you submitted for the Board's consideration.

¹ This authority was the Navy Special Incentive Programs Office within the Office of the Chief of Naval Operations (OPNAV N130D).

² By e-mail dated 5 January 2024, you affirmatively decided not to submit a response to this AO.

On 10 June 2019, you were issued official change of duty orders (i.e., permanent change of station (PCS) orders) reassigning you from the ██████████ with a homeport in ██████████, ██████████, to ██████████ Squadron (██████████), in ██████████, ██████████. The latter assignment was considered to be shore duty. Your report date to ██████████ was no later than 30 January 2020, with a projected rotation date (PRD) of February 2023.

On 29 July 2019, you agreed to extend your period of enlistment for 10 months.³

On 20 September 2019, you were issued orders modifying the PCS orders described above. Specifically, this modification adjusted your report date to ██████████ to no later than 30 August 2020 and your PRD to August 2023. The adjustment to your PRD triggered the requirement for obligated service until August 2023.

On 24 April 2020, you agreed to extend your enlistment for six months in order to incur sufficient obligated service to execute the 20 September 2019 modification of your PCS orders referenced above.⁴

On 22 September 2020, you reported for duty at ██████████ pursuant to the PCS orders referenced above.

On 23 November 2020, the Director, Military Personnel Plans and Policy (N13), published Policy Decision Memorandum (PDM) 001-21. In order to incentivize at-sea service for certain ratings, pay grades, and skills, PDM 001-21 established a policy that “[q]ualified Sailors [may] voluntarily curtail shore duty assignments by a minimum of 6 months prior to their original PRD to return to sea duty.” Sailors approved for such curtailment would be entitled receive Sea Duty Incentive Pay – Curtailment (SDIP-C) based only on the number of months their shore duty was curtailed. SDIP-C requests had to be received by the detailee six to nine months prior to the desired detachment dates. In accordance with PDM 001-21, detailers were directed to “determine whether a request meets all SDIP program requirements and can be executed, make a recommendation and submit all SDIP requests to PERS-40DD ... for a final decision.”

On 31 May 2022, you submitted separate NAVPERS 1306/7 (Electronic Personnel Action Request) through your commander to Navy Personnel Command (NPC) to PERS-4013 and PERS-40DD respectively, requesting to curtail your shore tour to receive SDIP-C in conjunction with the Voluntary Sea Duty Program (VSDP).⁵ Specifically, you requested to detach from

³ This action adjusted your Soft End of Active Obligated Service (SEAOS) date to 28 February 2023.

⁴ This action adjusted your SEAOS to 28 August 2023.

⁵ The VSDP is governed by MILPERSMAN 1306-141. It is a voluntary program that encourages Sailors to serve on Type 2/3/4/ activities (subject to eligibility requirements and restrictions to extend their enlistment in their current sea duty billet beyond their prescribed sea tour, to terminate shore duty and accept new orders to a sea duty billet, or to accept back-to-back seas duty orders beyond their prescribed sea/shore flow. Paragraph 3d of MILPERSMAN 1306-141 provides that “Sailors eligible to receive SDIP ... are also eligible for VSDP and should request to receive SDIP in conjunction with VSDP.” Paragraph 4a provides that “Sailors who have applied for VSDP will not be required to accept a billet they do not desire. Detailers will work with them during two MyNavy Assignment (MNA) cycles to find desirable orders.” Finally, paragraph 4e provides that “Sailors on shore duty must submit their VSDP request through their chain of command no later than 12 months prior to their PRD to ensure

██████████ in December 2022. Your commander recommended approval of these requests on 15 June 2022.

You submitted the above referenced NAVPERS 1306/7 for both the VSDP and SDIP-C via e-mail to your rating detailer on 16 June 2022.

By e-mail dated 28 June 2022, your detailer at NPC informed you that your VSDP and SDIP-C requests were under review.

On 20 September 2022, you sent the following e-mailer to your detailer:

I know we talked yesterday about the SDIP but I wanted to make sure there was zero chance of getting approved. I went back to look at [PDM 001-21] to make sure I didn't misread and missed the timeframe, but it does say to submit 6-9 months prior to desired detachment date. If it is no, then I will just have to accept it but I did submit within 6 months and was even told that it was being reviewed back in June by [your detailer]. I am also ok with leaving in JAN or FEB to make this work.

Approximately one hour after you sent the e-mail above, your detailer responded as follows: "As mentioned yesterday, if you are requesting to detach DEC/JAN/FEB, it will not be approved as that does not give you enough time to negotiate for orders as we discussed."

On 15 November 2022, you e-mailed your detailer after learning that you were pending reassignment orders to the ██████████ (██████████). Specifically, you stated:

The whole purpose of me submitting my 1306 for SDIP/VSDP to curtail my shore tour was to get ahead of this process and to have some if not a little say so in where I was to be stationed next. I was under the assumption from your last email that I would not get SDIP because it was "submitted" to [sic] late. If I knew I was still eligible and was given the option to choose between a ship in ██████████ or in ██████████ I would have chosen ██████████o. I can't lie that I've been extremely frustrated with this whole process going from reaching out a year in advance to negotiate and have my choice of where I'm going to being selected/advised for NEEDS OF THE NAVY to my 4th ship in 13 years and in my 2nd negotiating window at that.

On 30 November 2022, you were issued PCS orders reassigning you from ██████████ to the ██████████ (██████████), with a home station in ██████████. Your report date to the ██████████ was no later than 15 June 2023, with a PRD of December 2026. This assignment required obligated service to December 2026, which could be satisfied by your reenlistment or extension of your enlistment. You were instructed to advise PERS-40 within 30 days of receipt of these orders if you did not desire to be so obligated (obligated service must be obtained within 30 days of receipt of orders and prior to transfer).

On 14 August 2023, you reenlisted for a period of four years, with a SEOAS of 13 August 2027.

receipt by ... PERS-40," and that rating detailers will review the Sailor's eligibility for VSDP and forward the request to PERS-4013 for adjudication.

On 18 August 2023, you reported for duty onboard the ██████████ pursuant to the above referenced PCS orders of 30 November 2022.

Procedural Background

On 26 January 2023, prior to executing your PCS orders to report to the ██████████ or obligating yourself for service until December 2026 as required by those orders, you submitted a DD Form 149 to the Board requesting that those orders be cancelled and that you be allowed to negotiate for order under the VSDP in accordance with MILPERSMAN 1306-141. This application was subsequently designated as Docket No. 681-23. Specifically, you claimed that due to an oversight from PERS 405-CE (i.e., your rating detailers), you were ineligible for a monetary benefit that you requested within the correct timeframe because SDIP-C cannot be retroactively approved.

As part of its review process, the Board sought an AO from the DON office having cognizance over the subject matter. By memorandum dated 23 May 2023, OPNAV N130D provided an AO for the Board's consideration. This AO informed the Board that you had submitted your request to receive SDIP-C to your command on 31 May 2022, six months prior to your requested detachment month of December 2022, and that no action was taken by your detailers to forward the request for final approval. OPNAV N130D also opined that your SDIP-C application would have been approved if it had been forwarded for final approval based upon your service record and the documents provided. Despite this opinion, OPNAV N130D recommended that the Board take no corrective action on your naval record because you would not meet the criteria delineated in PDM 001-21 to volunteer to return to sea duty for a minimum of six months early for a minimum activity tour in a valid billet.

By memorandum dated 24 May 2023, you provided a rebuttal to the OPNAV N130D AO referenced above. In this response, you noted that, in accordance with MILPERSMAN 1306-141, "Sailors who have applied for VSDP will not be required to accept a billet they do not desire. Detailers will work with them during two My Navy Assignment (MNA) cycles to find desirable orders." You asserted that you were denied this benefit because your detailers incorrectly asserted that you did not make a timely application to the VSDP. You also clarified that you were not requesting to receive SDIP-C for service at your current shore command, but rather for the period that you would have been entitled to receive the payment if not for the administrative oversight from PERS-405CE in forwarding your request.⁶ As such, you requested that the Board take into consideration that both your SDIP-C and VSDP requests would have been approved but for the administrative oversights of your rating detailers, and asserted that under the circumstances your issuance of PCS orders should not be the sole determining factor after you made several attempts to resolve the error prior to receipt of those orders.

The Board reviewed your application in Docket No. 681-23 on 29 June 2023, and found insufficient evidence of probable material error or injustice warranting relief. Specifically, the Board found that, although your request to negotiate for orders under VSDP and to receive

⁶ You asserted that this period would have been from December 2022, which was the date of your request to detachment from ██████████ to August 2023, which was your report date to the ██████████.

SDIP-C was approved by your command, no action was taken by your detailers to forward the requests for final approval. You were subsequently issued your PCS orders assigning you to the ██████████ with a report date of 15 June 2023. Accordingly, the Board found that you were ineligible to receive SDIP-C because you had less than the required six months of shore duty remaining to curtail. With regard to your request to cancel your orders to report to the ██████████, the Board noted that those orders required you to reenlist or to extend your enlistment to December 2026 within 30 days and prior to transfer. As there was no evidence that you had yet extended your obligated service for this purpose, the Board found that it would be inappropriate to cancel those orders.⁷ The Board's decision was communicated to you by letter dated 5 July 2023.

By e-mail dated 20 July 2023, you provided seven previous decisions of the Board in which it granted relief under circumstances that you claimed to be similar to your own. You also insisted, without evidence or basis, that all of the evidence was not considered in Docket No. 681-23. The following morning, the Board's leadership responded to your e-mail by directing your attention to that part of the decision letter for Docket No. 681-23 which explained the procedural requirements for submitting a request for reconsideration. You subsequently prepared a DD Form 149 requesting reconsideration of the Board's decision in Docket No. 681-23 based upon the evidence not previously considered.⁸ By e-mail dated 1 August 2023, you supplemented your reconsideration request with an additional 20 previous Board decisions in which it granted relief under circumstances that you claimed to be similar to your own.⁹

As it did during the review of Docket No. 681-23, the Board sought another AO from the DON office having cognizance over the subject matter. By memorandum dated 9 November 2023, OPNAV N130D provided an AO in which it stood by its original AO of 23 May 2023.¹⁰ By e-mail dated 5 January 2024, you elected not to provide a response to this AO.

Conclusions

Upon reconsideration of your case in light of the new material not previously considered, the Board continues to find insufficient evidence of any material error or injustice warranting relief. The Board agreed with and validated the rationale for the decision in Docket No. 681-23.

The Board agrees with your claim that your rating detailers should have forwarded your VSDP application to PERS-4013 for adjudication in accordance with MILPERSMAN 1306-141, and that you were not required to accept a billet that you did not desire based upon your application for VSDP. As such, it was an error if, in fact, your detailers did not so forward your application

⁷ As noted above, you reenlisted on 14 August 2023, three months after your estimated detach date of 23 May 2023, and two months after the report NLT date of 15 June 2023.

⁸ The new evidence not previously considered included the seven previous Board decisions that you had sent by e-mail on 20 July 2023. These previous cases were Docket Nos. 0332-23, 1354-23, 5150-23, 6020-22, 0130-21, 5702-21, and 6049-21.

⁹ These previous cases were Docket Nos. 3751-23, 3832-23, 3525-23, 3611-23, 3542-23, 3605-23, 3607-23, 3428-23, 3264-23, 2369-23, 2420-23, 2170-23, 2051-23, 1886-23, 1802-23, 1552-23, 1601-23, 0226-23, 0243-23, and 1470-23.

¹⁰ The AO author did, however, recommend that the Board "highly considers and approves [your] orders cancellation request to give [you] an opportunity to renegotiate for orders and potentially qualify for SDIP."

for adjudication and/or to refuse to negotiate your orders request. That error, however, was clearly harmless because you were never deprived of any benefit that you would have been afforded by the VSDP. Specifically, you were not deprived of the opportunity to refuse your orders to the [REDACTED] or to negotiate for more desired orders. Those orders specifically stated that obligated service to December 2026 was required for this assignment and instructed you to advise PERS-40 within 30 days of receipt of the orders if you did not desire to obligate. That was your opportunity to refuse those orders and to negotiate for a more desirable assignment, but as the Board noted in Docket No. 681-23 there is no evidence that you availed yourself of this opportunity. As such, you were not deprived of any benefit that the proper processing of your VSDP application would have afforded you. Additionally, as of the date of the Board's decision in Docket No. 681-23, you still had not obligated yourself to the service required to execute those orders. As such, even at that late date you had the opportunity to decline the required obligation and thus effectively negate the orders before their execution. Instead, on 14 August 2023, more than a month after receiving the Board's decision in Docket No. 681-23 that essentially informed you that that was your proper recourse, you voluntarily elected to reenlist in order to execute the orders assigning you to the [REDACTED]. Although you voluntarily elected not to exercise it, you were not deprived of any benefit that would have accrued to you under the VSDP.

While it would have been improper for the Board to cancel the PCS orders that you had the opportunity to decline when it first considered your case in Docket No. 681-23, it would be even more improper, not to mention both logically and logistically impossible, to do so now that those orders have been executed and you have been serving aboard the [REDACTED] since August 2023. To do so would essentially negate those months of sea duty, thus disqualifying you for the benefits that you have earned through that service and creating ambiguity where it does not currently exist regarding the nature your service since August 2023. As it is the policy of the Board not to place any applicant in a less favorable position, the Board would not have been inclined to cancel your PCS orders even if it believed that you were actually harmed by the failure to properly process your VSDP application.

The Board also agrees with your claim that you submitted your SDIP-C application in a timely manner, and that it was an error for your detailers not to forward it to PERS-40DD for a final decision. That error was also clearly harmless, however, because it did not cause you to be deprived of any benefit to which you were actually entitled or earned. According to PDM 001-21, to be eligible for SDIP-C, you must be approved for SDIP prior to being selected and posted for follow-on PCS transfer orders. Regardless of the reason, you were not so approved prior to the posting of your orders to the [REDACTED]. As a result, your shore duty with [REDACTED] was never actually curtailed. Because your shore duty was not curtailed, you neither performed the additional sea duty which SDIP-C is intended to incentivize, nor sacrificed the shore duty necessary to qualify for the benefit of SDIP-C. In this regard, your case is clearly distinguishable from the 27 previous decision of the Board which you provided with your reconsideration request. In each of those cases, the applicant had actually performed the service or action required to qualify for the incentive pay or benefit at issue, but was deprived of that benefit through no fault of their own.¹¹ While your case is similar to most of these examples

¹¹ In the nine cases that you provided in which the applicant had timely applied for but was denied a Selective Retention Bonus because of processing errors, each of the applicants had fulfilled their reenlistment requirement for

in that your application for the benefit was not properly processed, it differs in the critical fact that you did not actually perform the service or action that the benefit is intended to incentivize. You did not actually serve more sea duty than you otherwise would have, and your shore duty was not otherwise shortened. As such, you never actually earned SDIP-C, and to grant it to you based upon an administrative oversight would provide you with an undeserved windfall.

The Board was also not convinced that your SDIP-C application would necessarily have been approved if it had been forwarded to PERS-40DD for final approval/disapproval. PDM 001-21 provides that “[d]etailers will determine whether a request ... can be executed, make a recommendation and submit all SDIP requests to PERS-40DD ... for a final decision.” It is apparent from the record that your detailers did not believe that your request could be executed within the relevant timeframe, and that their recommendation would therefore have been to disapprove your request. The Board presumes that this recommendation would have greatly influenced the PERS-40DD decision. In this regard, the Board did not believe that OPNAV 130D was qualified to opine upon a hypothetical decision of PERS-40DD.

In addition to finding that the failure to timely process your SDIP-C application was a harmless error, the Board also notes that the relief you requested is impractical. In accordance with 10 U.S.C. § 1552, the Board is empowered to correct naval records to correct errors or remove injustices. It is not, however, empowered to simply declare you eligible to receive SDIP-C, contrary to the governing regulations, or to direct payments to you. In order to effectuate the relief that you requested in this regard, the Board would have to modify your naval record to reflect that you actually did qualify for SDIP-C. In other words, it would have to modify your naval record to reflect that you detached from [REDACTED] no later than February 2023, and began performing sea duty (presumably onboard the [REDACTED] since that is where you are currently performing sea duty) at least six months prior to your actual report date. Such action would result in numerous unintended consequences, including but not necessarily limited to, entitling you to sea duty pay for sea duty not actually performed; triggering recoupment of basic allowance for housing received while stationed in [REDACTED], [REDACTED], after February 2023; creating unrated time during the period of sea duty that you did not actually serve; and negating performance evaluations received at [REDACTED] during the period in question. Again, it is the policy of the Board not to place applicants in an unfavorable position. It is also the practice of the Board not to provide undeserved financial windfalls. Accordingly, the Board would not have been inclined to grant such relief even if it did not find the error in failing to process your SDIP-C application to be clearly harmless.

the incentive. Likewise, in the eight cases that you provided in which the applicant has timely applied for but was denied the benefits of the Selective Training and Reenlistment program because of processing errors, each of the applicants had fulfilled their reenlistment requirement for the incentive. In the six cases that you provided in which the applicant had timely applied for but was denied incentive pay associated with the performance of professional medical duties because of processing errors, each of the applicants had actually performed the required professional medical duties. In the two cases that you provided in which the applicant had timely applied for but was denied incentive pay related to a designated specialty because of processing errors, both of the applicants actually performed such duties. In the case that you provided in which the applicant had timely applied for but was denied involuntary separation pay because of a processing error, the applicant was actually involuntarily separated for reaching high year tenure. Finally, in the case that you provided in which the applicant failed to request SDIP-Extension due to the absence of clear and timely counseling regarding the application process, the applicant had executed the required extension of sea duty.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that the presumption of regularity attaches to all official records. Accordingly, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/26/2024

[REDACTED]