



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

█
Docket No. 8102-23
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) 10 U.S.C. § 1552
(b) BUPERSINST 1610.10D

Encl: (1) DD Form 149 w/enclosures (Docket No. 8102-23)
(2) BUPERS ORDER 0914 dtg 011515z APR 14
(3) Fitness Report & Counseling Record (W2-O6) for the reporting period 31 October 2015 to 28 March 2016
(4) BCNR Decision Document ES Docket No. 4713-17 dated 4 December 2018
(5) DD Form 149 w/enclosures (Docket No. 4713-17)
(6) Fitness Report & Counseling Record (W2-O6) for the reporting period 29 March 2016 to 3 June 2016
(7) DD Form 214
(8) NAVPERS 1200/1 dated 29 July 2016
(9) CNPC 1200 PERS-911C Memo, subj: Request for Affiliation in the Selected Reserve, dated 4 August 2016
(10) PERS-80 Advisory Opinion dated 2 January 2024
(11) CNPC 1610 PERS-32 Memo, subj: Correction of Your Naval Record, dated 5 April 2019
(12) NAVPERS 1200/1 dated 1 November 2019
(13) CNPC 1820 PERS-912F/as Memo, subj: Retirement Order and Transfer Authorization to Retired Reserve Status, dated 2 October 2023
(14) Petitioner's Rebuttal to the AO dated 31 January 2024

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 the following relief¹:

a. Correction of her records to provide her the opportunity to receive a full opportunity for promotion consideration had the delay in affiliation not occurred;

b. Correction of her record to discount the years in which she was on the Individual Ready Reserve (IRR) as a result of her improper release from active duty so that she can be

¹ The relief listed in 1d through 1g was requested in Petitioner's rebuttal to the Navy Personnel Command (PERS 80) Advisory Opinion.

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reviewed for promotion to O-5 without those years counting towards her promotion consideration;

- c. Provide any further relief as this Board deems just and proper;
- d. Grant a Special Selection Board (SSB) for Fiscal Year (FY) 2019 Navy Reserve Commander Staff Promotion Selection Board (PSB);
- e. Remove the failures of selection for the FY 2019 through FY 2024 PSBs;
- f. Direct that an administrative remark be entered into Petitioner's personnel record stating she was erroneously placed on the IRR; and
- g. Repay three years of pay and points in the amount that Petitioner would have received if she had never been placed on the IRR.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 February 2024, 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 1 April 2014, Petitioner received BUPERS ORDER 0914 at enclosure (2). She was directed to report not later than June 2014 to the Bureau of Medicine and Surgery for Temporary Active Duty with a Planned Rotation Date (PRD) of June 2016.

- c. Petitioner was issued a detachment of Reporting Senior (RS), concurrent Fitness Report & Counseling Record (FITREP) for the reporting period 31 October 2015 to 28 March 2016. The Performance Traits, blocks 33 through 38, were marked "3.0/Meets Standards" and the Promotion Recommendation was marked "Promotable" in a summary group of one. The last sentence of block 41 stated "[Petitioner] made contributions to the MHS mission, however, she consistently underperformed compared to her multi-Service peers." Petitioner refused to sign the report. See enclosures (3) through (5).

- d. On 3 June 2016, Petitioner was issued a detachment of individual, concurrent FITREP for the reporting period 29 March 2016 to 3 June 2016. The Performance Traits, blocks 33 through 38, were marked "1.0/Below Standards" and the Promotion Recommendation was marked "Significant Problems" in a summary group of one. Petitioner refused to sign the report but submitted a rebuttal response to the adverse FITREP. See enclosures (4) through (6).

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e. On 3 June 2016, Petitioner was released from Active Duty for Special Work after completion of her required active service. See enclosure (7).

f. On 29 July 2016, Petitioner submitted a Ready Reserve Transfer Request Service Agreement (NAVPERS 1200/1). By memorandum of 4 August 2016, Commander, Navy Personnel Command (CNPC) (PERS 911) notified Petitioner that her request to affiliate with the Selected Reserve (SELRES) had been denied. PERS-911 stated “[c]ompetition for drilling as a SELRES Officer is intense and takes into account many factors, such as community health, record of performance, and previous reserve participation.” See enclosures (8) and (9).

g. On 18 May 2017, Petitioner submitted enclosure (5) requesting removal/replacement of two FITREPs, a special board for re-affiliation into the SELRES, and any additional remedies the Board believed necessary. On 18 July 2018, the Board considered Petitioner’s request for relief and recommended removal of the FITREP at enclosure (6) after determining the FITREP had been improperly used as a punitive letter for violations of the Uniform Code of Military Justice and the RS did not follow the procedures outlined in reference (b) for adverse reports. The Board determined the concurrent FITREP ending 28 March 2016 was not in error or unjust and recommended it remain in Petitioner’s OMPF. Further, the Board was not willing to grant the convening of an administrative board to consider Petitioner for affiliation with the SELRES because it was unable to determine if the denial of Petitioner’s request was based solely on the adverse FITREP. On 26 February 2019, the Assistant General Counsel (AGC) (Manpower and Reserve Affairs) approved the removal of the concurrent FITREP covering the period 29 March 2016 to 3 June 2016 and also granted modification to the FITREP ending 28 March 2016. Specifically, the AGC directed the removal of the last sentence after determining it was unjust for a RS from another Service to “gratuitously and negatively compare Petitioner’s performance in an otherwise positive report with that of other officers whose performance is evaluated under different systems.” See enclosure (4).

h. The FY 2019 Navy Reserve Commander Staff PSB convened. Petitioner was considered in-zone but failed of selection. See enclosure (10).

i. Petitioner transferred from the Reserve Active Status List (RASL) to the Inactive Status List (ISL) on 21 June 2018. On 28 August 2018, she transferred back to the RASL. See enclosure (10).

j. On 26 February 2019, the FY 2020 Navy Reserve Commander Staff PSB convened. Petitioner was not eligible² because she was deferred from promotion consideration due to her transfer from the RASL to the ISL effective 21 June 2018 and subsequent transfer back to the RASL effective 28 June 2016. See enclosure (10).

k. By memorandum of 5 April 2019, CNPC (PERS 32) notified Petitioner that her naval record had been corrected by removing the original concurrent report and associated documents for the period 29 March 2016 to 3 June 2016. See enclosure (11).

² The one-year rule of 10 U.S.C. 14301 prevented Petitioner from being eligible for promotion consideration.

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l. On 1 November 2019, Petitioner reapplied for affiliation with the SELRES. The request was approved 23 December 2019. See enclosure (12).

m. On 25 February 2020, the FY 2021 Navy Reserve Commander Staff PSB convened. Petitioner was considered above-zone but failed of selection. See enclosure (10).

n. On 8 April 2021, the FY 2022 Navy Reserve Commander Staff PSB convened. Petitioner was considered above-zone but failed of selection. See enclosure (10).

o. On 1 March 2022, the FY 2023 Navy Reserve Commander Staff PSB convened. Petitioner was considered above-zone but failed of selection. See enclosure (10).

p. On 28 February 2023, the FY 2024 Navy Reserve Commander Staff PSB convened. Petitioner was considered above-zone but failed of selection. See enclosure (10).

q. By memorandum of 2 October 2023, CNPC (PERS 9) notified Petitioner that “the Secretary of the Navy approved and authorized [Petitioner’s] request to transfer to Retire Reserve status effective 1 November 2023.” See enclosure (13).

r. Petitioner contends the following in enclosures (1) and her AO rebuttal at enclosure (14):

1) It was error and unjust for her to have been released from active duty in June 2016. Petitioner further comments that the FITREP for the reporting period 29 March 2016 to 3 June 2016 was “also accompanied by the decision to release [Petitioner] from active duty.” Additionally, Petitioner contends that if the proper procedures had been followed for the adverse report ending 3 June 2016, she would not have been removed from active duty. Lastly, she contends that the effect her release from active duty has had on her record is undeniable and unsurmountable.

2) It was error and unjust for her to be placed into the IRR after being improperly removed from active duty. Further, Petitioner contends she was unjustly denied re-affiliation with the SELRES in July 2016 based solely on the adverse FITREP. As support for her argument, Petitioner notes that as soon as the FITREP was removed, she applied and was immediately accepted into the SELRES. She contends that “by at least the preponderance of evidence,” this supports that the denial of her reserve affiliation was directly tied to the unfair, prejudicial, and improper comments previously contained in the FITREPs.

3) Petitioner contends being “forced to remain in the IRR,” affected the outcomes of the PSBs. Specifically, she contends that she was not selected for promotion by the FY 2021, 2022, or 2023 PSBs “undoubtedly due to her inability to develop her career from 2016 to 2019.”

4) In her rebuttal to the AO, Petitioner contends she has been erroneously retired as of 1 November 2023.” The paragraph at the bottom of page 2 of the rebuttal further states Petitioner “spoke with someone from the Reserve Personnel Services Branch of [NPC]” and that individual “informed [Petitioner] that she was incorrectly identified for retirement and that under the

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present circumstances, she could continue to serve until 2026.” Petitioner further states she has not received any official correspondence to correct the error.

s. By memorandum of 2 January 2024, NPC (PERS 80) provided an Advisory Opinion (AO) recommending Petitioner be granted consideration by a FY 2019 SSB. The AO explains that the relief granted by the previous Board, “more than likely resulted in a ‘material information of fact’ in the record considered by the FY 2019 Navy Reserve Commander Staff PSB. Lastly, the AO stated that if this Board determined Petitioner’s assignment to the IRR was unjust and resulted in unfair consideration by the PSBs, removal of Petitioner’s failures of selection is recommended. See enclosure (10).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting partial relief.

The Board, relying on the AO at enclosure (10), concluded the relief granted by the previous Board resulted in “material information of fact” in Petitioner’s record that was considered by the FY 2019 Navy Reserve Commander Staff PSB. Specifically, the Board noted the adverse concurrent FITREP was considered by the FY 2019 PSB but removed on 5 April 2019 prior to the FY 2021 Navy Reserve Commander Staff PSB. Therefore, the Board determined the granting of a SSB for FY 2019 is appropriate in Petitioner’s case.

However, the Board determined there was insufficient evidence of an error or injustice warranting the remainder of Petitioner’s requested relief. In making its decision, the Board noted Petitioner’s PRD was always June 2016 as reflected in BUPERS ORDER 0914 at enclosure (2). The behavior noted in the adverse FITREP that was removed by the previous Board was not the impetus for Petitioner’s release from active duty but rather, the detachment of individual FITREP required at the completion of the orders.

Further, the Board noted the record does not contain evidence, nor does the Petitioner contend, she coordinated a return to the SELRES prior to the PRD indicated on her orders. Instead, the Board noted the record indicates Petitioner’s first request to affiliate with the SELRES, after her release from active duty, occurred on 29 July 2016. Further, based on NPC’s 4 August 2016 notification of denial, the Board determined there is insufficient evidence to support Petitioner’s contention the adverse FITREP was the sole reason for the denial.

Lastly, with respect to Petitioner’s contention she was erroneously retired on 1 November 2023, the Board noted enclosure (13) indicates Petitioner requested transfer to Retired Reserve status. Therefore, the Board concluded there was insufficient evidence of an error or injustice in Petitioner’s current transfer to Retired Reserve status on 1 November 2023.

In summation, the Board determined Petitioner was not erroneously or unjustly released from active duty in June 2016. Further, the Board determined Petitioner did not coordinate a return to the SELRES prior to the June 2016 PRD and concluded her own inaction caused her to be placed in the IRR upon release from her active duty orders. Lastly, the Board concluded Petitioner was

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not denied SELRES affiliation in July 2016 due to the adverse FITREP. Based on the above, the Board concluded there was insufficient evidence of an error or injustice warranting her requested relief regarding promotion opportunities, removal of her failures of selection, addition of an administrative remark stating she was erroneously placed in the IRR, or repayment of pay and points during the three years she was erroneously in the IRR.

RECOMMENDATION

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

Convene a FY 2019 Navy Reserve Commander Staff SSB to consider Petitioner for promotion to commander.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

3/4/2024

