



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

[REDACTED]  
Docket No. 2040-16  
JAN 04 2017

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

Subj: REVIEW OF NAVAL RECORD ICO  
FORMER MEMBER [REDACTED] USN, [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 4 Mar 16  
(2) Certification of Live Birth on [REDACTED] dtd [REDACTED]  
(3) Certificate of Release or Discharge from Active Duty (DD Form 214) eff 31 May 16  
(4) Maternity and Convalescent Leave Policy (NAVADMIN 182/15) dtd 5 Aug 16  
(5) Petitioner's electronic leave history printout  
(6) OCNO memo Ser 130C1/16U0964 dtd 13 Jul 16

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show restoration of accrued leave and payment of lump sum leave (LSL).
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 August 2016 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, 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, finds as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
  - b. On 6 January 2015, the Petitioner's dependent child was born in Hawaii. See enclosure (2).
  - c. Petitioner departed on 150110 and returned from non-chargeable convalescent leave on 150220 (042 days). See enclosure (5).
  - d. Petitioner departed on 150223 and returned from chargeable ordinary leave on 150227 (005 days). See enclosure (5).
  - e. Petitioner departed on 150306 and returned from chargeable ordinary leave on 150306 (001 day). See enclosure (5).

- f. Petitioner departed on 150316 and returned from chargeable ordinary leave on 150319 (004 days). See enclosure (5).
- g. Petitioner departed on 150320 and returned from non-chargeable convalescent leave on 150403 (015 days). See enclosure (5).
- h. Petitioner departed on 150406 and returned from chargeable ordinary leave on 150410 (005 days). See enclosure (5).
- i. Petitioner departed on 150415 and returned from chargeable ordinary leave on 150415 (001 days). See enclosure (5).
- j. Petitioner departed on 150422 and returned from chargeable ordinary leave on 150422 (001 days). See enclosure (5).
- k. Petitioner departed on 150429 and returned from chargeable ordinary leave on 150529 (031 days). See enclosure (5).
- l. Petitioner's leave balance from 141001 to 150531; brought forward 50 days, earned 20 days, used 55 days, remainder balance 15. Note: Petitioner was paid 15 days accrued leave effective 31 May 2015. See enclosure (5).
- m. On 31 May 2015, the Petitioner was released from active duty. See enclosure (3).
- n. On 5 August 2015, the maternity and convalescent leave policy (NAVADMIN 182/15) was published. The policy states: "...commanding officers shall grant up to 126 days of convalescent leave to a member who has given birth, as requested by the service member. This policy is retroactive for eligible members who gave birth to a child on or after 1 January 2015". Furthermore, "The 126 days of convalescent leave includes the 42-day convalescent period currently authorized as maternal leave...to be taken immediately following the mother's release from the medical facility after the birth of the child. The additional leave, up to 84 days, does not need to be taken consecutively but must be used within the first year after the child's birth". See enclosure (4).
- o. On 13 July 2016, the Office of the Chief of Naval Operations had furnished an unfavorable advisory opinion which states the Petitioner should not warrant relief since: "There was no authority for the payment of unusual additional maternity leave when a member separates from the service". See enclosure (6).

## CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the opinion expressed in enclosure (6), the Board finds the existence of an error/injustice warranting corrective action. The new maternity and convalescent leave policy was published on 5 August 2015 which warrants eligible members an additional 84 days of maternity leave. The Petitioner was released from the Navy on 31 May 2015.

However, the panel relied heavily on the Petitioner's Official Military Personnel File, Petitioner's statement and the update naval policy pertaining to maternity and convalescent leave in order to provide relief to the Petitioner. The Board decided to warrant relief based on the maternity and convalescent leave policy which states: "The policy is retroactive for eligible members who gave birth to a child on or after 1 January 2015". The Petitioner took 48 days of annual leave and terminal leave as a substitute for maternity leave prior to her discharging from the Navy. Although the Petitioner was discharged prior to the publication of the policy, the retroactive eligibility should have warranted her relief since it allowed eligible members to receive additional convalescent leave entitlement after 1 January 2015. Thus, relief should be granted.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

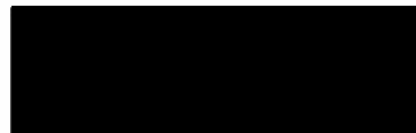
- a. 48 days will be reinstated to Petitioner's leave account.
- b. This change will entitle the member to a Lump-Sum Payment for Accrued Leave of 45.0 days. Note: military members are entitled to sell back a maximum of 60 days leave during their career.
- c. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that 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.



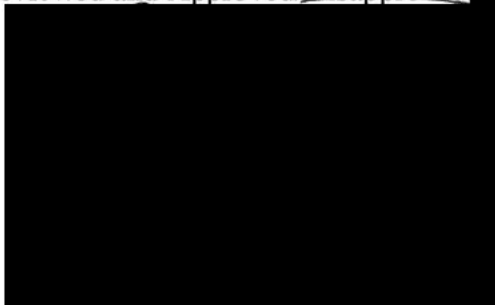
Recorder

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



Executive Director

Reviewed and Approved/Disapproved



1/17/17