



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

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Docket No. 3013-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) MCO 1040.31, subj: Enlisted Retention and Career Development Program, 8 September 2010
(c) MCO 1900.16 (with Change 2), subj: Separation and Retirement Manual (Short Title: MARCORSEPMAN), 15 February 2019
(d) DODI 1332.29, Involuntary Separation Pay (Non-Disability), 3 March 2017

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) MCTFS S183, Physical Fitness Test 183 Remarks, 5 January 2024
(4) MCTFS S184, CBT Fitness Test 184 Remarks, 5 January 2024
(5) DD Form 4, Enlistment/Reenlistment Document – Armed Forces of the United States, 15 April 2015
(6) MCTFS S125, Duty Limitations 125 Remarks, 7 January 2024
(7) NAVMC 321A, Agreement to Extend Enlistment, 3 April 2019
(8) MCTFS Basic Individual Record, 5 January 2014
(9) Petitioner's TFRS Careerist Active Duty Reenlistment Request (with follow-on action), [REDACTED], 15 August 2019
(10) NAVMC 321A, Agreement to Extend Enlistment, 10 October 2019
(11) Petitioner's TFRS Careerist Active Duty SEPS Pay Determination (with follow-on action), [REDACTED], 29 November 2022
(12) HQMC Memo 5420 MMEA, subj: Comments and Recommendations in the case of [Petitioner], 20 September 2023

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, hereinafter referred to as the Board, requesting that her naval record be corrected to reflect her eligibility to receive full involuntary separation pay (ISP).

2. The Board reviewed Petitioner's allegations of error or injustice on 10 January 2024 and, pursuant to its governing regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found 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. Petitioner enlisted in the Marine Corps and began a period of active duty service on 25 July 2011. See enclosure (2).

c. Petitioner received first class scores on her first seven physical fitness tests (PFT) between 5 October 2011 and 13 June 2017. See enclosure (3). She also received first class scores on her first seven combat fitness tests (CFT) between 3 October 2011 and 15 November 2017. See enclosure (4).

d. On 15 April 2015, Petitioner reenlisted in the Marine Corps for a period of four years.¹ See enclosure (5).

e. On 27 June 2018, Petitioner took a partial PFT.²³ See enclosure (3).

f. On 20 October 2018, Petitioner was placed in a limited duty status due to pregnancy. See enclosure (6).

g. On 3 April 2019, Petitioner agreed to extend her enlistment for seven months to obtain sufficient obligated service to facilitate her pregnancy.⁴ See enclosure (7).

h. On 13 August 2019, Petitioner gave birth to her first child. See enclosure (8). She was then placed in a post-partum limited duty status on 15 August 2018. See enclosure (6).

i. On 15 August 2019, Petitioner submitted a 48-month reenlistment request via the Total Force Retention System (TFRS).⁵ See enclosure (9).

j. On 10 October 2019, Petitioner agreed to extend her enlistment for seven months "to await a response from [Headquarters, Marine Corps (HQMC)] on [her] pending reenlistment request."⁶ See enclosure (10).

k. On 5 December 2019, Petitioner's reenlistment request referenced in paragraph 3i above was approved for 36 months (vice the 48 months that she requested). See enclosure (9). She reenlisted for three years pursuant to this authority on 13 December 2019.⁷

¹ This action adjusted Petitioner's end of obligated active service (EOAS) date to 14 April 2019.

² Petitioner did not perform the run event. She claims in enclosure (1) that this was due to a documented medical condition.

³ This was the last PFT that Petitioner conducted due to her successive pregnancies and their associated limited duty statuses.

⁴ This action adjusted Petitioner's EOAS date to 14 November 2019.

⁵ Petitioner requested to reenlist for 48 months to maximize her selective retention bonus.

⁶ This action adjusted Petitioner's EOAS date to 14 June 2020.

⁷ This action adjusted Petitioner's EOAS date to 12 December 2022.

l. On 16 May 2020, Petitioner was again placed in a limited duty status due to pregnancy.⁸ She gave birth to her second child on 11 February 2021, and was placed in a post-partum limited duty status on 12 February 2021. See enclosures (6) and (8).

m. On 6 January 2022, was again placed in a limited duty status due to pregnancy.⁹ She gave birth to her third child on 8 October 2022, and was placed in a post-partum limited duty status on 9 October 2022. See enclosures (6) and (8).

n. After being found unqualified for retention in accordance with reference (b) because she did not have a full and passing PFT/CFT since 2017, Petitioner submitted a request for a separation pay determination on 29 November 2022.¹⁰ See enclosure (11).

o. On 8 December 2022, Petitioner was approved for half ISP pursuant a waiver of the requirement that a Marine agree to serve for three years in the Ready Reserve before receiving ISP.¹¹ See enclosure (11).

p. On 12 December 2022, Petitioner was honorably discharged from active duty and assigned a reentry code of "RE-1B." She was entitled to half ISP in the amount of \$25,038.23, effective on that date. See enclosure (2).

q. Petitioner contends that the decision to grant her half ISP, rather than full ISP, was due to her inability to meet minimum retention standards, and that that decision was wrongfully made since she reenlisted with a partial PFT in December 2019 and remained in a limited duty capacity for the remainder of her enlistment. She claims that she was retention eligible with her partial PFT, but was ineligible for full separation pay when it came time to reenlist due to that partial PFT. See enclosure (1).

r. By memorandum dated 20 September 2023, the Deputy Head, Enlisted Assignments Branch, HQMC (MMEA), provided an advisory opinion for the Board's consideration recommending that Petitioner's request be denied. Specifically, the AO noted that a service member who is not fully qualified for retention is not qualified for full ISP per reference (d), but rather restricted to receiving only half ISP. As Petitioner was not fully qualified for reenlistment

⁸ According to enclosure (6), there was no break between Petitioner's previous post-partum limited duty status, which commenced on 27 September 2019, and her limited duty status for her second pregnancy commencing on 16 May 2020.

⁹ According to enclosure (6), there was no break between Petitioner's previous post-partum limited duty status, which commenced on 12 February 2021, and her limited duty status for her third pregnancy commencing on 6 January 2022.

¹⁰ Per paragraph 5(a)(12) of Chapter 4 to Enclosure (1) of reference (b), one of the basic reenlistment prerequisites is to "[p]ass a full, current [PFT] and [CFT]." Due to her successive pregnancies and their associated limited duty statuses (to include post-partum limited duty), the last full and passing PFT and CFT performed by Petitioner were those administered in 2017 (see paragraph 3c above). However, reference (b) also includes a blanket exception to this reenlistment prerequisite for "Marines who were otherwise qualified for retention prior to becoming pregnant" (see paragraph 6 of Chapter 4 to Enclosure (1) of reference (b)).

¹¹ Per reference (d), a Marine must have "entered into a written agreement with the [Marine Corps] to serve in the Ready Reserve" in order to receive half ISP. See paragraph 3.1.b(4) of reference (d). Marines whose separation is characterized as honorable or general, and who are involuntarily separated from active duty through denial of reenlistment, are eligible for half ISP if the disqualification for retention is due to non-compliance with the PFT/CFT requirements referenced in footnote 6 above. See paragraph 1308 of reference (b).

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due to not having a full and passing PFT and CFT, MMEA opined that she was only eligible for half ISP.¹² See enclosure (12).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found the existence of an injustice warranting relief.

The Board found no error in the assignment of half ISP under the circumstances of Petitioner's separation. Per reference (d), one of the criteria for a Marine being involuntarily separation due to denial of reenlistment to receive full ISP is that the Marine be fully qualified for retention at the time of that denial.¹³ Petitioner was not fully qualified for retention because she did not have a full and passing PFT or CFT since 2017. Although there is an exception to this requirement for pregnant Marines in reference (b), that exception did not begin to apply in Petitioner's case until 20 October 2018. Although she claims that her partial PFT in June 2018 was due to a documented medical condition, such a condition may excuse this reenlistment prerequisite only when it results in waiver of the PFT/CFT requirement by an Expanded Permanent Limited Duty Board.¹⁴ Accordingly, Petitioner was not eligible for receipt of full ISP at the time of her discharge. She was, however, eligible for half ISP, as she met each of the criteria for this benefit in accordance with references (c) and (d).

Despite finding no error the decision to award Petitioner only half ISP, the Board did find an injustice in this result. Specifically, the Board noted that Petitioner consistently achieved first class PFT/CFT scores prior to her partial PFT in June 2018, and she never had another opportunity to complete a full and passing PFT or CFT thereafter due to her successive pregnancies. Further, there is no reason to doubt her claim that the June 2018 PFT was partial due to documented medical reasons, or to believe that she would not otherwise have passed this PFT given her previous performances. Finally, the Board noted that the Marine Corps deemed Petitioner eligible for reenlistment in December 2019 despite not having a full and passed PFT and CFT at that time, and that nothing apparently changed in that regard thereafter. Under these circumstances, the Board found an injustice in the fact that Petitioner was denied full ISP. Reference (d) provides that "[i]n extraordinary instances, the [Marine Corps] may award full ISP to [Marines] who are otherwise eligible for half ISP when the specific reasons for separation and the overall quality of the member's service have been such that denial of such pay would be clearly unjust." The Board found these circumstances to be satisfied in this case, as the primary reason for her separation was that her successive pregnancies rendered her ineligible to reenlist and the overall quality of her service was favorable. Accordingly, the Board determined that Petitioner's naval record should be corrected to reflect her entitlement to full ISP.

RECOMMENDATION:

¹² A copy of this AO was sent to Petitioner for comment via e-mail dated 4 December 2023, but Petitioner failed to respond within the 30 days allotted.

¹³ See paragraph 3.1.a(3)

¹⁴ See paragraph 5(a)(12), Chapter 4 to Enclosure (1) of reference (b).

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

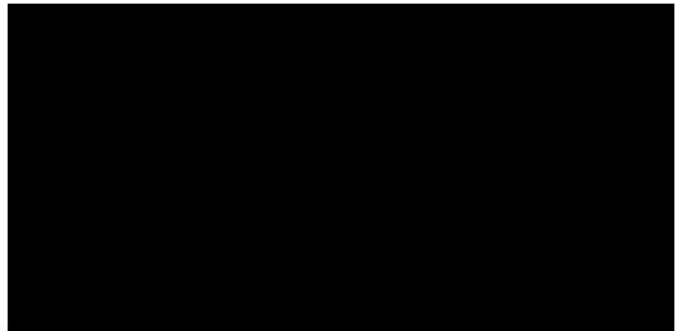
That Petitioner's naval record be corrected to reflect that she was eligible for full ISP upon her separation on 12 December 2022. This includes, but is not necessarily limited to, correcting Petitioner's record to reflect that, in addition to waiving the requirement for Petitioner to agree to serve 36 months in the Ready Reserve, the Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) determined that the circumstances of Petitioner's separation and overall quality of her service were such that denial of full ISP would clearly be an injustice; and correction of her DD Form 214 to reflect her entitlement to full ISP in the appropriate amount in block 18, and the separation code of "JBK1" in block 26.¹⁵

Upon correction of Petitioner's record in accordance with this decision, this record of proceedings will be forwarded to the Defense Finance and Accounting Service along with Petitioner's corrected records to determine what, if any, pay and allowances may be due Petitioner as a result of this corrective action.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.
5. The foregoing action of the Board is submitted for your review and action.

1/29/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X Board Recommendation Approved (Grant Relief – I concur with the Board's conclusion and therefore direct the relief recommended by the Board above.)

¹⁵ Petitioner's DD Form 214 may be corrected through either the creation of a new DD Form 214, or through the issuance of a DD Form 215, at the discretion of HQMC.

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Board Recommendation Disapproved (Deny Relief – I concur with the Board’s conclusion that there was no error in the denial of full ISP in Petitioner’s case, but disagree with its conclusion that such denial constituted an injustice under the circumstances. First, there is no evidence that Petitioner ever offered or agreed to serve for 36 months in the Ready Reserve upon her discharge. According to references (c) and (d), such an agreement (even if not acted upon) is a prerequisite to receiving even half ISP, so it was only through HQMC’s generous grant of a waiver in this regard that Petitioner was even eligible to receive half ISP. Second, the DC (M&RA)’s authority to award full ISP to Marines who are otherwise eligible only for half ISP is limited to “extraordinary instances” when “the specific reasons for separation and the overall quality of the member’s service have been such that denial of such pay would be clearly unjust.” I found nothing “extraordinary” about the circumstances of this case, nor did I find the denial of full ISP to be clearly unjust given the specific reasons for Petitioner’s separation and the overall quality of her service. As noted above, Petitioner was not even technically eligible to receive half ISP under the circumstances, so there was nothing unjust about denying her full ISP. Accordingly, I direct that no corrective action be taken on Petitioner’s naval record.)