



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

██████████
Docket No. 7387-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████, USNR RET,
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) DoD 7000.14-R FMR Volume 7A, Chapter 35

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record
(3) Advisory Opinion, Commander, NPC (PERS-9) ltr 5400 Ser 95/915, 4 Dec 23
(4) Email to PERS-95, 18 Mar 24
(5) Email from PERS-95, 21 Mar 24
(6) Petitioner's rebuttal to PERS-9 Advisory Opinion, 22 Mar 24

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 that her naval record be corrected to show that PERS 92 reissued orders with a separation date for the month of August 2023 not July 2023. Additionally, that her Certificate of Release or Discharge from Active Duty (DD Form 214), strength loss, and pay date were corrected to reflect the release from active-duty date of 29 August 2023 vice 28 July 2023. Furthermore, that 28.5 days of leave carried over as of July 2023 and 2.5 days additional leave be awarded.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 23 April 2024, 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, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. On 12 March 2019, Petitioner was issued official recall orders (BUPERS order: 0719) with ultimate activity was ██████████ for temporary active duty with an effective date of arrival of July 2019, with a projected rotation date of January 2022.

b. On 14 September 2021, Petitioner was issued official release from active-duty orders (BUPERS order: 2571) while stationed at ██████████ with an effective date of departure of January 2022. In time to permit completion separation processing and allowed travel

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET,
XXX-XX-[REDACTED]

time not later than 1 January 2022. On 10 December 2021, Petitioner was issued official modification to BUPERS order: 2571 to permit completion separation processing and allowed travel time not later than *1 April 2022*. On 4 April 2022, Petitioner was issued official modification to BUPERS order: 2571 with an effective date of departure of *September 2022*. In time to permit completion separation processing and allowed travel time not later than *30 September 2022*. On 13 September 2022, Petitioner was issued official cancellation to BUPERS order: 2571.

c. On 3 November 2022, Petitioner was issued official release from active-duty orders (BUPERS order: 3072) while stationed at [REDACTED] with an effective date of departure of March 2023. In time to permit completion separation processing and allowed travel time not later than 28 March 2023. On 16 March 2023, Petitioner was issued official modification to BUPERS order: 3072 with an effective date of departure of *September 2023*. In time to permit completion separation processing and allowed travel time not later than *24 September 2023*.

d. On 13 June 2023, President, Physical Evaluation Board (PEB) notified Chief of Naval Personnel that, “[p]er [SECNAVINST 1850.4F] and [SECNAV M-1850.1], the President of the [PEB], acting for the Secretary of the Navy, has considered the physical condition of the following members of the Naval service as referred by a Medical Evaluation Board to determine each individual's fitness for continued Naval service. FINDING. In each instance the member is found UNFIT to perform the duties of their office, grade, rank, MOS, or rating due to a disability A disability percentage assigned in accordance with the Veterans Affairs Schedule for Rating Disabilities is listed next to the member's name. DISPOSITION. You are requested to affect the PERMANENT RETIREMENT of these Service members from the Naval service under the provisions or Title 10 U.S.C. § 1201 or 1204.” Petitioner’s percent of disability is 90% based on the following Veterans Affairs Codes 5243, 8100, 9434-9411, and 8520.

e. On 23 June 2023, Petitioner was issued official modification to BUPERS order: 3072 with an effective date of departure of July 2023. In time to permit completion separation processing and allowed travel time not later than 28 July 2023.

f. On 12 July 2023, Commander, Navy Personnel Command (NPC), Millington, TN notified the [REDACTED] that the Secretary of the Navy has directed Petitioner’s permanent disability retirement with a release from active duty of 29 August 2023 and transfer to the Permanent Disability Retired List (PDRL) of 30 August 2023.

g. Petitioner was released from active duty and transferred to the Navy Reserve with an honorable character of service and was issued a DD Form 214 for the period of 8 July 2019 to 28 July 2023 upon completion of required active service. Furthermore, block 16 (days accrued leave paid) listed 60 days and block 18 (Remarks) listed “28.5 leave days carried over.”

h. On 17 August 2023, Petitioner’s Master Military Pay Account for the period of 1 October 2022 to 28 July 2023 listed the following: Brought Forward FY 63.5, Earned FY 25.0, Used FY 0.0, Balance CM 88.5. Finally, Petitioner received a lump-sum leave payment for 60 days effective 28 July 2023.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET, XXX-XX-[REDACTED]

i. As part of the Board's review, the Commander, NPC (PERS-9), reviewed Petitioner's contentions and the available records and issued an advisory opinion (AO). The AO stated in pertinent part:

"The MEDHOLD [Medical Hold] program is governed by [SECNAVINST 1770.5] as an entitlement under [Title 10 U.S. Code § 1074a]. It is required to be offered to Reserve members who qualify based on length of time on active orders and severity of medical condition. MEDHOLD maintains a Reservist in an active duty status, with full pay and benefits, until the medical condition has been corrected and the member is found fit to separate, or until the member has been processed through the Disability Evaluation System (DES), if it is not possible to achieve fitness for separation. Once the Reservist has been processed through the DES and the [PEB] has rendered a finding of unfit for continued Naval service, the Reservist, in accordance with [DoDM 1332.18 Vol. 1 of 24 Feb 23], is to be separated from active duty orders within 26-days."

"[SECNAVINST 1770.5] states that a service member may be entitled to MEDHOLD at the end of a qualifying period of orders for an unresolved in-line of duty (LOD) condition that "may render the member unfit for duty" under the DES, and goes on to say that "the mere existence of an illness, injury or disease does not necessarily qualify a Service Member for MEDHOLD. The condition must be deemed to be potentially unfitting, as determined by the respective service." NAVPERSCOM (PERS-95) is the MEDHOLD Benefits Issuing Authority (BIA) but must receive a MEDHOLD request prior to the expiration of the current set of active duty orders."

"SELRES [Selected Reserve] service members approved for MEDHOLD must be released from their current active duty orders and reassigned to a SELRES status in order to be processed to medical retirement and have DFAS [Defense Finance and Accounting Service] establish their retirement pay account. [Petitioner] was released from her recall to active duty order effective 28 July 2023, and her NRC [Navy Reserve Center], per [COMNAVPERSCOM Millington TN msg R 121206Z Jul 23], was provided 30 days to process her medical retirement to the PDRL."

The AO concluded, "[Petitioner's] Naval service record and active pay account not be amended, nor that her 28 and a half days of leave carried over be awarded to her. She was afforded all the benefits of MEDHOLD in accordance with SECNAVINST 1770.5 and Title 10 U.S. Code § 1074a to include referral to the DES, and was afforded 45 days from the PEB's decision date until she was released from her recall to active duty orders, in order to be returned to a SELRES status and properly medically retired to the PDRL. Block 16 of her DD Form 214, page 1 of [DON-230908-TBPC], listed days accrued leave paid as 60 days. Per current instructions, 60 days is the maximum number of leave days a service member pay be paid over a Naval career." Enclosure (3).

j. On 18 March 2024, the Board emailed PERS-95 requesting references which require Service members to be released from active duty and placed into the SELRES in order for the Reserve unit to process a Service member to the PDRL. Enclosure (4).

k. On 21 March 2024, PERS-95 emailed the Board stating that, "[t]here is no written policy or SOP [standard operating procedure] that I am aware of. That may exist somewhere in a TSC or CNRFC instruction, but I am not familiar. What I do know is that when a Reserve Sailor is retired

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET,
XXX-XX-[REDACTED]

from their orders instead of returned to a SELRES status for separation, the entire process grinds to a halt. DFAS can't set up the right pay account, the retirement status in DEERS frequently takes months to fix...." Enclosure (5).

l. On 22 March 2024, Petitioner provided a rebuttal to the AO. The Petitioner rebuttal stated in pertinent part:

"I received an approved order extension of my original Release from Active Duty (RAD) date and Permanent Disability Retired List (PDRL) date from 28 JUL 2023 and 29 JUL 2023 to modified RAD of 29 August 2023 and PDRL of 30 August 2023. A Personnel Strength Loss was erroneously initiated on 14 August 2023. PERS 95 has unjustly denied my base pay, and other entitlements including medical and dental coverage from the period of 28 JUL 2023 to 29 August 2023."

"The Navy's decision to unlawfully end my active-duty orders on 28 JUL 2023 after changing my Release from Active-Duty date to 29 August 2023 was illegal and denied myself and my dependent of base pay and entitlements and medical / dental care that I was entitled to under federal law. There is no federal law, DOD regulation or Navy policy exists that authorizes Reserve Component members that served for a period greater than 30 days and are in Integrated Disability Evaluation System, to be returned to a nonpay/non duty SELRES status (Home Awaiting Orders or AD Without Pay) while awaiting final disposition of the IDES without the members express consent and approval of the service secretary."

"I request that PERS 92 reissue orders with a separation date for the month on August 2023 not July 2023. I further request that my DD214, strength loss and pay date be corrected to reflect the Release from Act-Duty date (RAD) of 29 August 2023 vice 28 July 2023."

Enclosure (6).

m. The DFAS HUNT system shows Petitioner's retirement date of 30 August 2023.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the naval message of 12 July 2023 by the Commander, NPC, the Board finds the existence of an injustice warranting the following partial corrective action. On 12 July 2023 the Commander, NPC notified the [REDACTED] that the Secretary of the Navy has directed Petitioner's permanent disability retirement with a release from active duty of 29 August 2023 and transfer to the PDRL of 30 August 2023. In this connection, the Board determined that the Navy erred by not following the naval message by the Commander, NPC which directed Petitioner's *release from active duty* on 29 August 2023.¹ Additionally, the Board noted that PERS-95 could not provide any regulation or SOP that directs reserve members who are on active-duty orders to be released from active duty and placed into the SELRES before being placed on the PDRL. Therefore, the Board determined that Petitioner

¹ On 12 July 2023, Commander, NPC, Millington, TN notified the [REDACTED] that the Secretary of the Navy has directed Petitioner's permanent disability retirement with a release from active duty of 29 August 2023 and transfer to the PDRL of 30 August 2023.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USNR RET,
XXX-XX-[REDACTED]

should not have been released from active duty on 28 July 2023 and under these circumstances, relief is warranted.

Regarding Petitioner's request that 28.5 days of leave carried over as of July 2023 plus the 2.5 days additional leave be awarded, the Board determined that Petitioner was paid for 60 days of leave upon her release from active duty. In accordance with reference (b),² Petitioner is eligible to sell back only 60 days of leave in her career and she does not meet any of the listed exceptions.

RECOMMENDATION

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

Petitioner will be issued a new DD Form 214 with block 12b (separation date this period) of 29 August 2023 vice 28 July 2023, block 23 (Type of separation) Retired vice RELACDU and Transferred to the Navy Reserve, and block 28 (Narrative reason for separation) Disability, Permanent vice Completion of Required Active Service. Note: Furthermore, NPC will correct any other entries on the DD Form 214 affected by the Board's recommendation and any other documents in Petitioner's naval record will be corrected accordingly.

Note: The DFAS will complete an audit of Petitioner's pay records to determine Petitioner's pay entitlements.

That a copy of this report 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. 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 Regulations, 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

6/11/2024

[REDACTED]

Deputy Director

Signed by: [REDACTED]

² Generally, a Service member is entitled to receive payment for no more than 60 days of accrued leave during a military career. See subparagraph 2.1.1.4 for exceptions. A Service member eligible for an unused accrued leave settlement is authorized an election regarding payment or carryover of the leave. The member may elect to receive payment for a portion of the unused leave, not to exceed a career total of 60 days, and to have the remaining accrued leave carried forward to a new or extended enlistment. The total of paid and carried forward leave may exceed 60 days. The 60-day leave payment limitation does not apply to leave accrued by a member of a Reserve Component while serving on active duty, full-time National Guard duty, or active duty for training during a period of more than 30 days, but not in excess of 365 days, beginning on or after October 1, 2001.