



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

█
Docket No. 93-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USN
XXX-XX-█

Ref: (a) Title 10 U.S.C. § 1552
(b) Petitioner's Official Military Personnel File

Encl: (1) DD Form 149 w/attachments
(2) Commander, Navy Personnel Command (PERS 312), memo of 18 March 2024
(3) Legal counsel ltr of 20 May 2024 (w/enclosure)

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that the Board reconsider her Physical Evaluation Board findings such that she be granted a disability retirement, change her final paygrade from E-4 to E-5, and to recalculate her severance pay based on E-5 pay.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 13 June 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 Petitioner's application, enclosure (1), together with all material submitted in support thereof, relevant portions of Petitioner's naval record, including the reference (b) official military personnel file (OMPF), and applicable statutes, regulations, and policies. The Board also considered enclosure (2), an advisory opinion (AO) from Commander, Navy Personnel Command (PERS 312), and enclosure (3), Petitioner's response to the AO.

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. A review of Petitioner's OMPF reveals she enlisted in the Navy and commenced a period of active duty on 7 April 2009. While in-service, Petitioner was referred to the Integrated Disability Evaluation System (IDES). As part of the IDES process, the Department of Veterans' Affairs (VA) presented its findings concerning Petitioner. Thereafter, Petitioner was reviewed

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by a Formal Physical Evaluation Board (FPEB), which issued its decision on 8 August 2018. According to the FPEB, Petitioner was unfit due to low back pain at 20% disability. The report of the FPEB documents it considered whether all potentially unfitting conditions had the combined effect of making the service member unfit, and concluded they did not. In connection with issuing its findings, the FPEB prepared a written Formal Rational explaining its decision in detail, and which specifically addressed Petitioner's anxiety condition.

c. On 24 August 2018, Petitioner filed a Petition for Relief (PFR), in which she argued that the "uncontroverted evidence Petitioner provided indicated that her anxiety significantly interferes with her ability to carry out the duties or her rate. She has missed work on multiple occasions due to her anxiety, underwent intensive medical treatment, and provided substantial documentation. Petitioner's PFR was denied on 10 September 2018. Thus, on 12 October 2018, President, PEB, informed Commander, Navy Personnel Command that Petitioner was unfit at 20% and should be discharged.

d. Although a copy of the report is not available in Petitioner's OMPF, other records demonstrate Petitioner received nonjudicial punishment on 20 November 2018 for violation of articles 86 and 91 of the Uniform Code of Military Justice. Specifically, Petitioner's performance evaluation for the period ending 20 November 2018 documents that Petitioner received nonjudicial punishment for violations of Uniform Code of Military Justice articles 86 and 91. As a result of her misconduct, Petitioner was awarded a reduction in rate from YN2 to YN3. Petitioner has asserted that she appealed her nonjudicial punishment. In her petition, Petitioner provided a letter from [REDACTED], dated 24 January 2019, which reflects that her nonjudicial punishment appeal was granted in part. Specifically, according to the letter from [REDACTED], Petitioner's reduction in rate was suspended for a period of six months. While Petitioner's rate was still in a suspended status, she was separated, on 29 January 2019, with severance pay pursuant to her PEB findings. Despite her suspended reduction in rate, her Certificate of Release or Discharge from Active Duty (DD Form 214) reflects her rate as YN3.

e. In her petition, Petitioner requests this Board to reconsider her physical conditions such that she be granted a disability retirement, change her final pay grade to E-5, and recalculate her severance pay based on the pay grade of E-5. In support of her request, Petitioner contends that the PEB failed to consider the overall effect her conditions had on her ability to perform her duties as a Yeoman and that this lack of recognition of overall effect was in error. In addition, she provided a letter from a flag officer, which granted in part her appeal of nonjudicial punishment, suspending her reduction in rate.

f. In order to assist the Board in reaching a decision, it obtained the AO, which was considered unfavorable to Petitioner. The AO stated that it was unable to find evidence that Petitioner's rate reduction was suspended. In response, Petitioner provided the enclosure (3) letter from [REDACTED], which was discussed above.

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CONCLUSION

In its review of the entirety of Petitioner's materials as described above, the Board concluded that Petitioner's should be granted in part. Specifically, the Board determined Petitioner's paygrade should be changed to E-5, effective the date of her discharge. In reaching its decision, the Board noted that enclosure (2) was not helpful because it did not address the letter from [REDACTED]. The Board observed that the document provided by Petitioner appeared to be authentic. In granting this relief, the Board determined that Petitioner's reduction in rate was suspended by an appropriate flag officer and, thus, that portion of her nonjudicial punishment had not been executed. Thus, upon her separation with severance, she would have held the rate Yeoman Second Class and paygrade E-5.

Regarding Petitioner's request for a disability discharge, the Board found insufficient evidence of error or injustice with respect to Petitioner's assertion that the PEB failed to consider the overall effect her conditions had on her ability to perform her duties as a Yeoman and she should have been issued a higher disability rating. On this point, the Board observed that Petitioner was afforded substantial process while in the IDES and, with the assistance of assigned counsel, she pressed each of her assertions. The Board noted that each assertion was carefully considered in the due course of the PEB process, including the filing of a PFR. Further, the Board determined that the PEB's decision appeared rational and substantially based on the facts before it, including in its preparation of a reasoned Formal Rationale. Thus, the Board found that Petitioner has provided insufficient evidence that there was error or injustice in the PEB's decision.

RECOMMENDATION

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 29 January 2019, reflecting her Grade, Rate, or Rank as "YN2" and Pay Grade as "E5."

DFAS shall audit the Petitioner's pay account for any adjustment in severance pay caused by changing her pay grade at discharge to E-5 from E-4.

And no other changes to Petitioner's 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-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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

6/28/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]