



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

██████████  
Docket No. 1039-24  
Ref: Signature Date

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Dear ██████████

This is in reference to your request for reconsideration of the previous decision of the Board for Correction of Naval Records [hereinafter referred to as the Board] in Docket No. 6182-23. After careful review and consideration of all of the evidence of record, to include the new materials provided that were not previously considered, the Board continued to find insufficient evidence of any material error or injustice warranting relief. Accordingly, your application has been denied.

A three-member panel of the Board, sitting in executive session, reconsidered your application in light of the new material provided on 29 February 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board included your application and the new material provided in support of your latest request for reconsideration; all of the documents considered in Docket No. 6182-23;<sup>1</sup> relevant portions of your naval record; and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved in your case. Accordingly, the Board determined that such an appearance was not necessary and considered your case based on the evidence of record.

**Factual Background.** The factual background discussed in the decision letter for Docket No. 6182-23 is adopted and incorporated by reference herein. Following are the additional relevant facts based upon the new material that you provided with your reconsideration request.

On 26 January 2024, after receiving the Board's decision in Docket No. 6182-23, you sent a hypothetical inquiry to PERS-40DD via e-mail. Specifically, you quoted the last paragraph on page 2 and the first two paragraphs on page 3 of the decision letter for Docket No. 6182-23,<sup>2</sup> and

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<sup>1</sup> These documents are discussed in the decision letter for Docket No. 6182-23.

<sup>2</sup> The specific language was quoted as follows:

asked for a hypothetical opinion regarding whether a request submitted under the circumstances described would have been approved. After receiving a response from the Incentive Pays Program Manager at PERS-40DD expressing confusion regarding your inquiry, on 30 January 2024 you clarified that you were asking whether there was any reason that an SDIP-C request submitted “under normal circumstances (PS1 requesting SDIP-C to a type 2 or 4 sea duty ship or squadron) and request was submitted within required timeframe and had command recommendation” would be denied. The program manager responded to this e-mail as follows:

Request for SDIP C submitted on time would not be denied. However, if it was submitted to the SDIP desk later (administrator error) not on timeline, then it would be denied if the timeline has passed. Depending on how long after the timeline will we make a decision to review for further processing.

MILPERSMAN 1306-125 provides that “Sailors who elect not to meet the minimum obligated service requirements for their reassignment will have their enlisted master file record flagged.” It further provides that once a Sailor’s enlisted master file record is flagged, the Sailor:

- a. Forfeits his ... Career Waypoints-Reenlistment (C-WAY-REEN) application quota approval (if in receipt of one). The quota will be revoked and the Sailor will be counted as “Intends to Separate (ITS)” in C-WAY-REEN;
- b. Will be issued needs of the Navy orders, if the Sailor has 12 months or more remaining between [the projected rotation date] and [the end of active obligated service (EOAS)/soft EOAS].

**Procedural Background.** The procedural background discussed in the decision letter for Docket No. 6182-23 is adopted and incorporated by reference herein, and supplemented as follows:

On 18 January 2024, the Board considered your reconsideration convened to consider your reconsideration request in Docket No. 6182-23 and unanimously found insufficient evidence of any material error or injustice warranting relief. The letter documenting that decision was signed and sent to you on 26 January 2024.

By e-mail dated 26 January 2024, you express your dissatisfaction with the Board’s decision in Docket No. 6182-23. Specifically, you took issue with the Board’s finding that the failure of your detailers to forward your application for the Voluntary Sea Duty Program (VSDP) was harmless “because you were never deprived of any benefit that you would have been afforded by the VSDP,” citing to the above referenced provisions of MILPERSMAN 1306-125 to assert that

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On 31 May 2022, you submitted separate NAVPERS 1306/7 (Electronic Personnel Action Request) through your commander to Navy Personnel Command (NPC) for PERS-4013 and PERS-40DD respectively, requesting to curtail your shore tour to receive SDIP-C in conjunction with the Voluntary Sea Duty Program (VSDP). Specifically, you requested to detach from COMLCSRON 2 in December 2022. Your commander recommended approval of these requests on 15 June 2022. You submitted the above referenced NAVPERS 1306/7 for both the VSDP and SDIP-C via e-mail to your rating detailer on 16 June 2022. By e-mail dated 28 June 2022, your detailer at NPC informed you that your VSDP and SDIP-C requests were under review.

the Board's finding was inaccurate. You also claimed, without evidence, that the Board "ignored or missed the [second] OPNAV advisory opinion stating 'Additionally, I recommend that the board highly considers and approves his orders cancellation request to give the member an opportunity to renegotiate for orders and potentially qualify for SDIP.'"<sup>3</sup> In response to this e-mail, you were directed to the last paragraph of the decision letter for Docket No. 6182-23, which provided the requirements to request reconsideration of the Board's decision.

By e-mail dated 5 February 2024, you forwarded a DD Form 149 to formally request the present reconsideration of the Board's decision in Docket No. 6182-23. In this request, you essentially repeated the errors that you claimed in your 26 January e-mail, as referenced above. You also again cited to the above referenced provision on MILPERSMAN 1306-125 to challenge the Board's conclusion in Docket No. 6182-23 that the 30 days provided within the orders assigning you to the ██████████ to inform PERS-40 that you did not desire to obligate yourself until December 2026 was your opportunity to refuse those orders and to negotiate for a more desirable assignment. Specifically, you argued that your reenlistment quota would have been revoked if you refused those PCS orders. You also complained of the Board's determination in Docket No. 6182-23 that it was logically and logistically impossible to revoke your PCS orders since they had already been executed, noting that you had requested that your case be expedited by e-mail dated 31 July 2023 since you were two weeks out from reporting for duty.<sup>4</sup>

On 6 February 2024, you sent another e-mail to the Board essentially repeating the arguments made in your application submitted on 5 February 2024. In this e-mail, however, you stated that you were "willing to concede the SDIP-C." You also requested that the Board cancel your reenlistment and allow you to separate from the Navy as soon as possible if it continued to find insufficient evidence of any material error or injustice warranting relief.

On 12 February 2024, you sent another e-mail to the Board expressing your frustration with what you described as "clear contradictions" between the decisions in Docket Nos. 0681-23 and 6182-23. Specifically, you asserted that the conclusion in Docket No. 0681-23 that it would be inappropriate to cancel the orders since they were past their execution date was inconsistent with the conclusion in Docket No. 6182-23 that doing so was logically and logistically impossible since you had already executed those orders. You also claimed that "I keep reading that I didn't notify PERS-40 which does not make any sense because PERS-40 is the enlisted detailing office which is who my complaint of error or injustice is with."<sup>5</sup>

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<sup>3</sup> This advisory opinion was referenced in the second full paragraph on page 5 of the decision letter for Docket No. 6182-23, so it was not "ignored or missed" by the Board.

<sup>4</sup> Your application in Docket No. 6182-23 was, in fact, expedited for review. However, your expectation of a decision within two weeks was wildly unrealistic.

<sup>5</sup> It appears that you were taking references to PERS-40 in the Board's two previous decisions out of context. In both cases, the Board observed that you did not inform PERS-40 of your lack of desire to obligate in order to execute your PCS orders. The point of this observation was to establish that it was entirely within your power to have the orders canceled. As such, the fact that your complaint was against PERS-40 was irrelevant.

**Conclusions.**

Upon careful review and consideration of all of the evidence of record, the Board validated the findings of Docket No. 6182-23. Accordingly, the conclusions reached in Docket No. 6182-23 were adopted and incorporated by reference herein.

The only new material not previously considered by the Board that you provided in support of your present reconsideration request was the hypothetical opinion that you sought from PERS-40DD, and your arguments pertaining to the applicability of MILPERSMAN 1306-125. The remainder of your arguments reflected your disagreement with the Board's previous decision without presenting new arguments or material supporting your claimed error and/or injustice, which the current panel found to have no merit. Three separate Boards panels have now unanimously reached the same conclusion in your case.

The Board did not find the hypothetical opinion provided by PERS-40DD to be persuasive because you neglected to provide the individual who offered that opinion all of the relevant facts. As stated in Docket No. 6182-23, the Board presumed that the recommendation of your detailers would have greatly influenced the PERS-40DD decision on your SDIP-C request. However, you neglected to include within your hypothetical question what the Board noted in Docket No. 6182-23, that "your detailers did not believe that your request could be executed within the relevant timeframe, and that their recommendation would therefore have been to disapprove your request." The hypothetical opinion that you sought from PERS-40DD would only be relevant if it factored in the likelihood that your detailers would have recommended disapproval, and the Board is confident that that opinion would have been different had you included this critical factor in the hypothetical.

With regard to your request for SDIP-C, the fact remains that your previous shore duty was never curtailed. As a result, you neither performed the additional sea duty which SDIP-C is intended to incentivize, nor sacrificed the shore duty necessary to qualify for, the benefit. Accordingly, you never actually earned SDIP-C, and to grant it to you based upon an administrative oversight would provide you with an undeserved windfall. The Board presumes your agreement with this conclusion since you expressed your willingness to concede this issue in your e-mail of 6 February 2024.

The Board found no merit in your contention that you could not refuse the orders assigning you to the ██████████ based upon the provisions of MILPERSMAN 1306-125. While you were correct that doing so would forfeit your C-WAY-REEN quota and indicate your intent to separate, you neglected to consider the remainder of MILPERSMAN 1306-125 which includes discussion of the actions to take when a Sailor subsequently changes his/her mind and decides to remain on active duty. You clearly had the opportunity to refuse your orders to the ██████████, as stated in the order itself, and to negotiate for a better assignment. It was your own decision not to do so. Additionally, your alternative request in your 6 February 2024 e-mail to cancel your reenlistment and allow you to separate from the Navy as soon as possible if the Board refuses to provide the relief requested is fatal to your argument that you could not realistically have refused these orders, as you have indicated your desire to achieve the same end result that would have occurred had you originally refused those

orders rather than to continuing serving onboard the ██████████. You cannot reasonably blame the Board for your current dilemma when you failed to follow the instructions in your orders and/or to avail yourself of the opportunity to avoid the orders that you did not desire. As the Board noted in Docket No. 6182-23, that was essentially what the Board suggested that you do in Docket No. 0681-23.

The Board also found no merit in your claim that the Board's decisions in Docket Nos. 0681-23 and 6182-23 were contradictory. In both cases, the Board reacted to the situation as it existed at the time. Specifically, when the Board convened to review Docket No. 0681-23 on 29 June 2023, both the 30 days you were provided to inform PERS-40 of your desire not to obligate yourself to execute the orders, and the original execution date of those orders, had passed. When it convened on 18 January 2024 to consider Docket No. 6182-23, not only had those suspenses already passed, but you had already been at sea pursuant to the orders for approximately six months. As such, there was nothing contradictory about these comments. Both related back to the fact that you had already failed to avail yourself of the opportunity to negotiate for better orders.

Your claim that the Board failed to acknowledge the recommendation of OPNAV N130 in its 9 November 2023 e-mail is without merit. The Board clearly referenced that advisory opinion on page 5 of the decision letter for Docket No. 6182-23, and specifically cited the recommendation in footnote 10 of that letter.

Even if the Board agreed with your contention that there was a material error or injustice the failure to process and approve your application for the VSDP, it remains no less logically and logistically impossible to cancel the orders assigning you to the ██████████ than it was when the Board convened to consider Docket No. 6281-23 on 18 January 2024. To do so would essentially negate eight months of sea duty, thus disqualifying you for the benefits that you have earned through that service and creating ambiguity where it does not currently exist regarding the nature of your service since August 2023.

Finally, as the Board did not find any material error or injustice in the failure to timely process and approve your VSDP and SDIP-C applications, it found no basis to grant your alternative request to void your reenlistment. You made a voluntary decision to reenlist and obligate yourself for sufficient service to fulfill the orders assigning you to the ██████████ ██████████, even after the Board denied your original request in Docket No. 0681-23 and essentially informed you that refusal of those orders was your proper recourse. Accordingly, your alternative request to cancel your reenlistment is disapproved.

The Board strongly suggested that you attempt to work with your command and detailers to seek reassignment or an early discharge through normal channels. While you are entitled to seek further reconsideration of this decision as discussed below, after three unsuccessful attempts your chances of obtaining the relief that you seek through this Board are unlikely given the logical and logistical impossibility of actually cancelling your orders.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not

previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely, \_\_\_\_\_

3/14/2024

