



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

█  
Docket No. 5248-24  
Ref: Signature Date

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

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

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

Encl: (1) DD Form 149  
(2) Advisory Opinion dtd 9 July 2024

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 record be corrected by granting a correction to her Certificate of Release or Discharge from Active Duty (DD Form 214), and placing her into the Disability Evaluation System (DES) for medical retirement, or to allow her to finish her last three years in the Reserve in order to retire with 20 years of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 September 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, together with all material submitted in support thereof, relevant portions of her naval record, and applicable statutes, regulations, and policies to include enclosure (2), an advisory opinion (AO) furnished by Navy Personnel Command (PERS-95). Although Petitioner was provided an opportunity to respond to the AO, she chose not to do so.

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. Petitioner enlisted in the Navy on 9 March 1996 and served on active duty until 13 April 2006. Her DD Form 214 states an Honorable characterization of service and Completion of Required Active Service as the narrative reason for separation. She subsequently enlisted in the Navy Reserve (USNR) on 27 April 2006. On 24 June 2007, Petitioner's commanding officer (CO) signed a Non-Medical Assessment (NMA) stating Petitioner had been assigned to the

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[REDACTED] in a non-drill billet awaiting the outcome of her medical review board. On 20 July 2009, Navy Bureau of Medicine and Surgery (BUMED) recommended Petitioner be found not physically qualified (NPQ) for retention due to a history of fibromyalgia, myofascitis, lumbar, thoracic, and cervical radiculitis, endometriosis, temporomandibular joint disorder, irritable bowel syndrome, migraines, dyspareunia, gastroesophageal reflux disease, insomnia and bipolar disorder. On 24 July 2009, PERS-95 notified Petitioner's command that Petitioner was found NPQ and that she had an option to appeal the NPQ findings to the Physical Evaluation Board (PEB). On 11 April 2012, Petitioner signed documentation acknowledging that she had been found NPQ and elected to have her medical records be referred to the PEB. She further acknowledged she understood that currently it was the determination that her "injury, illness or disease was NOT incurred or aggravated during Naval Reserve service." She indicated she did not want to apply for Line of Duty Benefits (LOD-B). On 12 April 2012, Petitioner's CO stated in a NMA that Petitioner wanted to continue in the USNR.

c. On 16 October 2012, the PEB reviewed Petitioner's file and determined Petitioner was NPQ to continue in a Reserve status. On 22 October 2012, the PEB sent notification of its findings to the Petitioner via certified mail. On 16 November 2012, the United States Postal Service returned the letter to the PEB as the letter went unclaimed and the PEB closed the case. On 28 December 2012, PERS-5 notified the Petitioner's command of the PEB findings and directed the command to discharge her from the Navy Reserve. On 6 February 2013, Petitioner was separated from Navy Reserve. There is no evidence she was issued Administrative Remarks (1070/613) to document her release from the Navy Reserve.

d. Petitioner argues that her DD Form 214 is incorrect; specifically, that her time in service is erroneous. She claims that she was promoted before she left service and asks for an upgrade in rate/paygrade. She also requests that she either be placed into the Disability Evaluation System (DES) in order to be processed for her medical conditions or to finish her last three years in the Reserves and retire with 20 years of service. She claims that she did not receive notification regarding the PEB process and did not properly get assigned a Physical Evaluation Board Liaison Officer (PEBLO) to handle her disability case.

e. In order to assist the Board in evaluating this petition, the Board obtained an advisory opinion (AO), enclosure (2). The AO notes Petitioner, at the time of separation from the Navy Reserve, had 11 Years, 8 months, and 17 days of qualifying time. Consequently, Petitioner would need to serve an additional 8 years and 4 months to be eligible for retirement. However, Petitioner is unable to serve in the Navy Reserve, as she was found NPQ nearly 12 years ago. In addition, the AO discovered all service records, to include Personnel Command orders and evaluations, document at the time of separation Petitioner was an AO2/E-5. Finally, the AO observed service members who are enrolled into the DES are assigned a PEBLO, as she was not enrolled in the DES, she was not eligible to be assigned a PEBLO.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board determined Petitioner warrants a 1070/613 form to document her separation from the Navy Reserves.

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Despite the Board's recommendation to grant partial relief, the Board concluded the preponderance of the evidence did not support medical retirement or a change to her DD Form 214. First, the Board concurred with the AO that Petitioner received the required due process in her MRR and there was no error or injustice that her conditions were not processed through the DES. Moreover, the Board noted the Petitioner did not provide any evidence with her petition that her conditions were eligible for DES consideration. Second, the Board found there was no evidence that Petitioner was promoted to AO1/E-6 while in the Navy Reserve; consequently, there is no error with regards to Petitioner's listed rate at discharge, AO2/E-5. Finally, the Board determined the evidence supports Petitioner has 11 years and 8 months of qualifying service time and is not eligible for retirement or reinstatement to the Navy Reserve to qualify for retirement.

#### RECOMMENDATION

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

Naval Personal Command (PERS-313) shall issue a 1070/613 document to record Petitioner's time and discharge from the Naval Reserve.

Note: Navy Personnel Command, will correct any other entries affected by the Board's recommendation.

That no further changes be made to 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-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 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.

10/22/2024

