



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

██████████
Docket No. 5423-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
USN, ██████████

Ref: (a) 10 U.S.C. § 1552
(b) MILPERSMAN 1610-015, Documentation on Fitness Reports and Performance Evaluations for Failure to Maintain Deployability or Individual Medical Readiness, 1 October 2018
(c) BUPERSINST 1610.10E, Navy Performance Evaluation System, 6 December 2019
(d) SECNAVINST 1920.6D, Administrative Separation of Officers, 24 July 2019
(e) 10 U.S.C. § 1556
(f) MILPERSMAN 1611-010, Officer Performance and Separations for Cause, 30 October 2019
(g) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018
(h) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl:¹ (30) BCNR Memo ██████████ Docket No. 2330-23, subj: Review of Naval Record of [Petitioner], 8 January 2024 (with PDASN (M&RA) action of 2 April 2024)
(31) BCNR Memo ██████████ Docket No. 2330-23, subj: Review of Naval Record of [Petitioner], 3 April 2024
(32) BCNR Counsel's E-mail Response to Petitioner, sent Wednesday, May 1, 2024 @ 12:37 PM (with e-mail chain)
(33) BCNR Letter ██████████ 23-1-212, 17 May 2024
(34) DD Form 149 with attachments

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 the corrective actions upon her naval record previously directed by the Board pursuant to her request in Docket No. 2330-23 be reversed.

2. The Board reviewed Petitioner's allegations of error or injustice on 13 June 2024 and, pursuant to its governing policies and procedures, found insufficient evidence of any error or

¹ Per paragraph 3 below, enclosures (1) – (29) of the record of proceedings for Docket No. 2330-23 (enclosure (30)) are incorporated by reference herein.

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injustice warranting relief. None of the Board members who reviewed Petitioner's application on 13 June 2024 were involved in the previous review of Docket No. 2330-23. As discussed in paragraph 7 below, I have determined that this case warrants Secretarial review and recommend, contrary to the Board's recommendation, that Petitioner's request be granted. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies.

3. The Board adopted and incorporated by reference paragraphs 3b-3gg of the record of proceedings for Docket No. 2330-23 (enclosure (30)), along with the enclosures listed in that record. The factual background of Petitioner's case provided by this incorporated content is supplemented as follows:

a. On 3 November 2023, the Board determined that equitable relief was warranted in Docket No. 2330-23.² In making this determination, the Board found no error in any of the adverse actions taken against Petitioner because the COVID-19 vaccination mandate was a lawful order

² The Majority of the Board recommended that the following corrective action be taken on Petitioner's naval record in the interests of justice in Docket No. 2330-23:

- That Petitioner's special fitness report (FITREP) for the reporting period 1 November 2021 to 28 November 2021, and her adverse detachment of individual FITREP for the reporting period 29 November 2021 to 21 May 2022, be removed from Petitioner's naval record and replaced with appropriate and neutral continuity memoranda;
- That the NAVPERS 1070/613, dated 9 September 2021, recording Petitioner's acknowledgment and refusal of the COVID-19 vaccination mandate, and her statement in response to that administrative counseling, be removed from Petitioner's naval record;
- That the Report of Misconduct (ROM), dated 7 January 2022, along with Petitioner's response thereto and the subsequent endorsement, be removed from Petitioner's naval record;
- That all documents pertaining to the initiation of show cause proceedings, and Petitioner's subsequent qualified resignation request, be removed from Petitioner's naval record. This included, but was not necessarily limited to, the 10 February 2022 memorandum notifying Petitioner of her show cause proceedings; Petitioner's qualified resignation request of 10 February 2022 and all subsequent endorsements thereto; and the Deputy Chief of Naval Personnel's memorandum of 28 February 2022 to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) recommending that Petitioner's qualified resignation be approved, which included the Acting ASN (M&RA)'s action on that recommendation;
- That Petitioner be issued a new DD Form 214 for her service ending on 25 May 2022 with the following corrections:
 - Block 18 (Remarks): Delete the phrase "CONTINUED FROM BLK 28, COVID-19 INJECTION REFUSAL;"
 - Block 23 (Type of Separation): Change "Discharged" to "Resigned"
 - Block 26 (Separation Code): Change "BNC" to the code most appropriate for the change to the narrative reason for separation stated below.
 - Block 28 (Narrative Reason for Separation): Change "Unacceptable Conduct" to "Secretarial Authority";
- That Petitioner's naval record be scrubbed for any other material or entries referencing her refusal to abide by the former COVID-19 vaccination mandate, and that any such materials or entries be removed. This includes, but is not limited to, all information systems or database entries that may reference or indicate Petitioner's refusal to abide by the vaccination mandate.

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and her refusal of it constituted a violation of Article 92, Uniform Code of Military Justice (UCMJ). Further, Petitioner elected to tender her voluntary resignation from the Navy rather than exercise her right to a Board of Inquiry (BOI). Despite finding no error in any of the adverse actions taken against Petitioner, the Board found an injustice warranting corrective action in that Petitioner would not have reasonably expected to receive adverse FITREPs or to have show cause proceedings initiated under similar circumstances at the time of the Board's review given the changes in policy regarding the vaccination mandate. The Board also found a disparity in treatment for Petitioner relative to other Navy service members who also refused the vaccine mandate but who sought an accommodation or exemption, which also warranted equitable relief. See enclosure (30).

b. On 2 April 2024, the Principal Deputy ASN (M&RA) (PDASN (M&RA)), acting pursuant to authority delegated by the ASN (M&RA), approved the Majority's recommendation in Docket No. 2330-23 reflected in paragraph 3a above. See enclosure (30).

c. The PDASN(M&RA)'s decision in Docket No. 2330-23 reflected paragraph 3b above was communicated to Navy Personnel Command (NPC) by letter dated 3 April 2024, and corrective action was promptly taken on Petitioner's naval record pursuant to that decision. See enclosure (31).

d. On 30 April 2024, Petitioner sent an e-mail to the Board objecting to its decision in Docket No. 2330-23 despite the fact that the Board acted pursuant to her original request,³ and requesting that no action be taken to correct her record.⁴⁵ See enclosure (32).

e. Upon receipt of Petitioner's request referenced in paragraph 3d above, the Board immediately contacted NPC in an effort to halt the correction of her record pursuant to her request. Unfortunately, NPC had already taken the corrective action directed by Docket No. 2330-23, so it was too late to withdraw the action. By e-mail dated 1 May 2024, the Board's Counsel responded to Petitioner's e-mail of 30 April 2024 on behalf of the Executive Director informing her of this fact and inviting her to submit another request to correct her naval record to the Board if she believed the action taken in Docket No. 2330-23 to constitute an error or injustice. In this regard, the Board's Counsel noted that it was the policy of the Board not to direct the correction of a naval record in any manner which would place the applicant in a less favorable position, but that such a request would be entertained as an exception to that policy. See enclosure (32).

³ Petitioner sarcastically "thanked" the Board for "providing proof of [its] egregious miscarriage of justice by attempting to delete evidence of wrongdoing from [her] record," even though her original application specifically requested that the Board remove the adverse information pertaining to her refusal of the COVID-19 vaccination mandate from her naval record.

⁴ Petitioner stated that she desired her record to remain untouched "as a testament to the ugly reality of the COVID-separations that the DoD now so desperately wishes to re-write."

⁵ Petitioner forwarded a copy of this e-mail to her Member of Congress, which subsequently generated a Congressional Inquiry to the Department of the Navy. The Board responded to this inquiry on behalf of the Secretary of the Navy (SECNAV) by letter dated 17 May 2024.

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f. Petitioner submitted her formal request to reverse the corrective action taken in Docket No. 2330-23 through a DD Form 149 signed on 5 May 2024. She asserted that "[her] record must remain unchanged as evidence to [the DoD's unlawful COVID injection orders and retaliatory actions against those who rightfully refused such orders] until the time that such shameful behavior is recognized as such by the DoD or higher authority." She also falsely stated that the Board "has already admitted to altering [her] record into a false narrative." See enclosure (34).

4. Conclusion. Upon careful review and consideration of all the evidence of record, the Board found insufficient evidence of any error or injustice warranting corrective action.

a. The Board found no error in its previous decision in Docket No. 2330-23. Petitioner clearly misunderstood the role of the Board by demanding acknowledgment that the former COVID-19 vaccination mandate constituted an unlawful order. That is not the Board's function, as it is not a judicial body. The only evidence in the record regarding the legality of the former COVID-19 vaccination mandate came from various statements of the SECNAV, the Chief of Naval Operations, and the ASN (M&RA) asserting that the order was legal.⁶ The Board would have been open to considering the opinions to the contrary from individuals in authority or with actual expertise or other legal evidence of the illegality of the order, but Petitioner offered no such evidence. Her personal beliefs, no matter how forcefully stated, did not constitute evidence of this contention.

b. As Petitioner failed to prove that the former vaccination mandate was an unlawful order and there was no controversy regarding whether she actually violated that order, the Board was correct to find no error in any of the adverse actions which resulted from her violation of a presumably lawful order. Violation of lawful orders has consequences in the Navy, and none of those consequences suffered by Petitioner were unreasonable given the circumstances.

c. The Board also found no injustice in the action taken in Docket No. 2330-23. The Board granted the equitable relief reflected in footnote 2 above because Petitioner would not reasonably have expected to receive the same adverse consequences for the same conduct at the time of the Board's review due to the revocation of the former vaccination mandate and because the Board found that Petitioner was treated differently than similarly situated individuals who also refused the vaccine mandate but who sought an accommodation or exemption.⁷ Reference (g) specifically directs that the Board should consider these factors when determining whether equitable relief is warranted based on an injustice, so these were valid bases for the Board's decision in Docket No. 2330-23. Based upon this finding of an injustice, the Board granted Petitioner relief that she had specifically asked for. In enclosure (1), Petitioner specifically requested that the Board direct the "[r]emoval of the unlawful and false FITREP and administrative documentation in conjunction with refusal of the COVID-19 injections from [her]

⁶ See, e.g., enclosures (3), (4), (7), (8), and (27).

⁷ The latter group would expect any adverse information pertaining to a vaccine refusal to be automatically removed from the record if still serving, regardless of the validity of their accommodation or exemption request in accordance with enclosure (26).

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record." Contrary to her claim in enclosure (32), she did not condition this relief upon the admittance of wrongdoing on the part of the Department of Defense – the Board does not speak for the Department of Defense. Accordingly, there was nothing unjust about the Board taking the clearly favorable corrective action upon Petitioner's naval record that she had specifically requested.

d. The Board also found no injustice in the Board's decision not to reinstate Petitioner in the Navy. First, Petitioner's discharge from the Navy was voluntary, as she submitted a voluntary resignation request in lieu of BOI proceedings. Accordingly, she was discharged pursuant to her voluntary request, which negates any possible injustice which might otherwise warrant relief. Second, the Board's decision not to grant Petitioner's request for reinstatement was in accordance with enclosure (27). Enclosure (27) provided specific guidance to the Board that reinstatement of Petitioner under the circumstances of this case would be inappropriate relief. There can be no injustice from the Board's compliance with binding guidance provided by higher authorities.

e. Finally, the Board notes that it is the policy of the Board not to correct a naval record in any manner which would place the individual in a less favorable position. The actions taken by the Board in Docket No. 2330-23 were unquestionably favorable to Petitioner despite her insistence to the contrary, and the granting of her request would require the Board to place her in a less favorable position by restoring the adverse information in her record. Accordingly, the Board found that it would be contrary to the Board's long-standing practice to correct the Petitioner's naval record in the manner that she requests.

5. Recommendation. Based upon the conclusions discussed in paragraph 4 above, the Board recommends that no corrective action be taken on Petitioner's record and that the corrections made pursuant to the Board's decision in Docket No. 2330-23 remain in place.

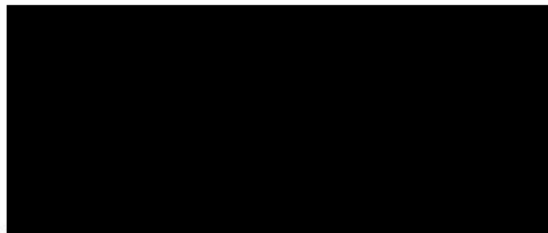
6. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

7. I fully concur with the Board's conclusion that there is no merit to any of Petitioner's contentions. The Board granted relief that she specifically requested in Docket No. 2330-23, and its decision in that case was fully supported by the evidence, reasonable, and consistent with that of other similarly situated individuals. Nonetheless, I have determined that this case warrants Secretarial review because Petitioner insists that she has been aggrieved by the Board's action. Even upon being notified that she would be provided the opportunity for reinstatement in the Navy pursuant to Executive Order 14184, Petitioner has continued to insist that the adverse information removed from her record by the Board in Docket No. 2330-23 must be restored. While it is the Board's policy not to correct a naval record in any manner that would place the applicant in a less favorable position, this case presents the unique circumstance of an applicant who desires for her naval record to be corrected in that manner. As such, I believe an exception to that policy is appropriate, and that Petitioner's request to reverse the corrective action directed

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in Docket No. 2330-23 should be granted. Accordingly, the foregoing action of the Board is submitted for your review and action in accordance with Section 6(e)(1)(c) of reference (h).

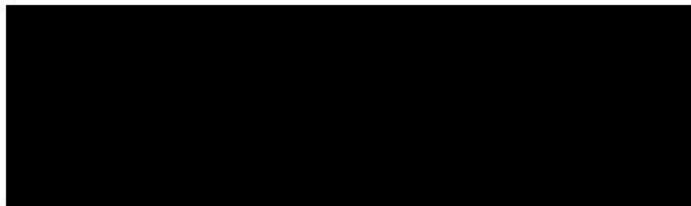
8/10/2024



ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

— Board Recommendation Approved (Deny Relief – I concur with the Board’s conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

[REDACTED] Petitioner’s Request Approved (Grant Relief – I concur with the Executive Director’s comments in paragraph 7 above. Accordingly, I direct that the previously-made corrections to Petitioner’s naval record pursuant to Docket No. 2330-23 be reversed. The Board shall provide NPC with copies of those original documents as they existed prior to the corrections from the case file for Docket No. 2330-23 to facilitate this corrective action. The previously corrected documents shall be destroyed, and Petitioner’s record shall be restored to appear as it did at the time of her discharge.)



Date: 23 April 2025