

Clear Policy Needed on the Effects of Pregnancy
When Seeking a Commission
EWS Contemporary Issues Paper
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Behind each law changing battle exists a personal struggle, one woman's story serving as the catalyst to justice.

- A. R. Dones

Scenario

In February 2001, a staff sergeant on the Marine Enlisted Commissioning Education Program (MECEP) in Chicago, Illinois, was told that upon graduation her commission would be delayed due to her pregnancy. She was told that being pregnant was a disqualifying factor to being commissioned and that she would not be commissioned until she could pass a physical fitness test (PFT) after giving birth. The staff sergeant had fulfilled all requirements: She had completed Officer Candidate School, a PFT (while two months pregnant) and scored a 277, and was to graduate that May from the university she was attending. In January 2001 (one month before being informed of her commissioning delay), she had taken her commissioning physical. The examining doctor, S. H. Isaacma approved her as "physically qualified (PQ) for pre-commission."

The staff sergeant requested mast¹ to the Commanding General, Marine Corps Recruiting Command (CG, MCRC). She also submitted a request for review of her case to the Board of

¹ Request Mast is an administrative process in which Marines may bring a grievance to their chain of command. MCO 1700.23F is the order on Request Mast.

Corrections for Naval Records (BCNR). In each case, the policy was cited as nonnegotiable. In the CG, MCRC's reply to the staff sergeant he wrote, "These prohibitions are in effect because the requirements applied to your change in status from enlisted to officer. While women can function, while pregnant, in a wide variety of military jobs, we would not enlist a pregnant female, and commissioning, as a change in status, follows the same arrangement, and it, in many ways, is not a continuation of your enlisted career, but a complete dissolution of that and replacement with something qualitatively different-- a new beginning."² The BCNR concurred with General Park's reply.³

² This quote is part of General Park's (at the time CG, MCRC) response to Staff Sergeant Dones' request mast; part of the BCNR Docket Number 3390-03.

³The information gathered for this scenario is from personal experience. At the time, I was the staff sergeant in the scenario.

Introduction

Despite the fact that current language applies to pregnant females who are not yet service members, these orders were applied to an enlisted staff noncommissioned officer, and the staff sergeant's commissioning was delayed because of higher's decision to apply the same "arrangement." To avoid future injustices, this policy must be revised. Specifically, the Marine Corps' policy on commissioning programs must be updated for female enlisted military members because the current policy is vague, illogical, and discriminatory.

Current Policy

One cannot reference a standing order without being sent to another order, which in turn references yet another order. In MCO 5000.12E, no mention is given to how a pregnancy can affect a servicewoman's commission.⁴ Since the order applies to current Marines, the issue of enlistment into the Marine Corps by default is governed by the Navy regulations (MANMED, BUMED, and OPNAVINST 6000.1A). Per the MANMED, a current pregnancy is disqualifying for enlistment and new candidates who are to be

⁴ Department of the Navy, MCO 5000.12E, *Marine Corps Policy Concerning Pregnancy and Parenthood*, 8 December 2004, URL:<[http://www.usmc.mil/directiv.nsf/73dd6bb050e72cf385256bca0072322f/5509634021c7e8a68525649700645423/\\$FILE/MCO%205000.12E.pdf](http://www.usmc.mil/directiv.nsf/73dd6bb050e72cf385256bca0072322f/5509634021c7e8a68525649700645423/$FILE/MCO%205000.12E.pdf)>, accessed 4 November 2007.

commissioned;⁵ however, this policy references DODINST 6130.4. Per DODINST 6130.4, a current pregnancy is disqualifying until six months after the end of the pregnancy, before appointment, enlistment or induction into the Armed forces.⁶

Vague

The Department of Defense, Navy, and Marine Corps policies on pregnancy are vague because they do not distinguish between a female civilian requesting enlistment or appointment, and a female servicewoman attaining a commission. Rather, interpretation is left to the reader. The Marine Corps fails further by not addressing the issue other than deferring to Navy regulations. In example, MCO 5000.12E discusses assignment/deployment limitations, as well as, shipboard/aviation assignment. However, in neither paragraph is the limitation on commissioning mentioned. The order references 21 other orders in establishing policy (SECNAVINSTs, BUMEDINSTs, OPNAVINSTs, NEHC-6260-TM-01, and other MCOs), and none cover pregnancy during a commissioning program.

⁵ Department of the Navy. NAVMED P-117. *Manual of the Medical Department*. 12 August 2005. URL:<<http://www.brooksidepress.org/Products/ManMed/Changes/manmed%20change%20126.pdf>>. Accessed 4 November 2007.

⁶ Department of Defense. Instruction 6130.4. *Medical Standards for Appointment, Enlistment, or Induction in the Armed Forces*. 18 January 2005. URL:<<http://www.dtic.mil/whs/directives/corres/pdf/613004p.pdf>>. Accessed 8 December 2007.

Vagueness is evident in the policies' verbiage. The purpose of SECNAVINST 1000.10 is as follows:

- a. To provide a DON policy for all military personnel on pregnancy and issues related to pregnant servicewomen that will build positively on existing programs in the Navy and Marine Corps to ensure quality of opportunity while maintaining operational readiness;
- b. To expand the requirements for education and training;
- c. To establish a requirement for the collection of objective data, and analysis of information for use in evaluation of DON pregnancy policies;
- d. To help guide the department's future efforts in this area.⁷

The introduction of information on pregnancy for MCO 5000.12E is as follows:

As indicated in reference (a), pregnancy is a natural event that can occur in the lives of Marines and Sailors, and can be compatible with a successful naval career.⁸

and the overriding concern for commander's and supervisory personnel, and health care providers responsible for pregnant servicewomen serving with the Marine Corps is

...to provide for the health and safety of the servicewoman and her unborn child while maintaining optimum job and career performance. Policy and procedures are required to ensure the health, welfare, and administrative support of pregnant Marines and Sailors, and to minimize the impact a pregnancy has on operational readiness.⁹

The purpose of OPNAVINST 6000.1B is as follows:

To provide administrative guidance concerning pregnant

⁷ Department of the Navy. SECNAVINST 1000.10. *Department of the Navy (DON) Policy on Pregnancy*. 6 February 1995. URL:<http://www.brooksidepress.org/Products/OperationalMedicine/DATA/operationalmed/Instructions/1000_10.pdf>. Accessed 14 February 2008.

⁸ See note 4.

⁹ See note 4.

servicewomen, and to promote uniformity in the medical-administrative management of normal pregnancies per references (a) through (m). This instruction is a complete revision and should be reviewed in its entirety.¹⁰

In an opening subparagraph the order then states that "pregnancy status will not adversely affect the career patterns of Navy servicewomen."¹¹

In the opening scenario, the Marine Corps' response and the BCNR's response to the staff sergeant's pregnancy do not seem consistent with the intent of policy: The determination did not build positively on existing programs in the Marine Corps; did not treat pregnancy as a natural event that can occur in the life of a Marine; and it is not compatible with a successful naval career. Rather, it treated the pregnancy status as an adverse impact on the career pattern of a naval servicewoman.

Illogical

The current policies are illogical. Specifically, a current servicewoman seeking a commission logically should not be treated as a female civilian seeking a commission. A civilian female seeking an appointment has not met the standard, she has not gone through the entry-level training, much less the

¹⁰ Department of the Navy. OPNAVINST 6000.1B. *Guidelines Concerning Pregnant Service Women*. 4 March 2003. URL:<<http://doni.daps.dla.mil/Directives/06000%20Medical%20and%20Dental%20Services/0600%20General%20Medical%20and%20Dental%20Support%20Services/6000.1B.pdf>>. Accessed 4 November 2007.

¹¹ See note 10.

sustained training required in service. Treating a servicewoman seeking a commission like a female civilian seeking a commission is to deny a servicewoman positive career progression. In fact, denying the staff noncommissioned officer appointment punishes the servicewoman who has been recognized to have high performance (in selection to/completion of a highly competitive program). Similarly, the policies do not allow for the fact that a servicewoman can get pregnant the day after her commission or get pregnant while in training without adverse impact.

A commissioning physical must be completed, and the servicemember found physically qualified prior to commissioning/appointment. Any female (enlisted or civilian) who becomes pregnant after the physical has an opportunity to withhold the information until after the ceremony, i.e., a servicewoman can become pregnant a day to three months before her commissioning date and not inform the command and still get commissioned. Therefore, the current policy encourages a pregnant servicewoman to withhold information.

Additionally, by treating the enlisted servicemember the same as a candidate, a servicemember's enlisted career is considered "dissolved" once commissioned. Yet the enlisted record stays part of the servicemember's official military

personnel file. A new one is not created to cover only the commissioned service and the enlisted record is not archived separately.

Another illogical decision raised by the staff sergeant's scenario is the determination made by the BCNR in their response to Docket Number 3390-03. The BCNR states that OPNAVINST 6000.1B does not apply to Marines. However, the Marine Corps policy on pregnancy makes direct reference to OPNAVINST 6000.1B. Therefore, the Marine Corps use of the OPNAVINST makes it applicable to Marines.

Discriminatory

Delaying a servicewoman's commission due to pregnancy puts her behind her peers: Less seniority than those she would have been commissioned with (later date of rank and later promotion eligibility to next rank). In not being commissioned a female Marine remains in her present grade and is eligible to compete noncompetitively for promotion to the next rank. The Marine Corps is saying that the staff sergeant rates eligibility for a promotion but not a commission. The conclusion to be drawn is that a pregnant enlisted woman does not rate to be commissioned, whereas an enlisted woman who is not pregnant does.

The private sector treats pregnancy as a natural condition and limits an employee's status only under The Americans with Disability Act (ADA): A woman's doctor decides when/if her pregnancy is disabling and from that point on, she is treated

just as any man or women who is disabled.¹² Yet the military treats pregnancy separately, thereby discriminating against pregnant personnel.

Counter Argument

Counter: Opponents will argue that the Marine Corps policy on pregnancy is based on what is in the best interest of the servicewoman's health and the operational readiness of the Marine Corps.¹³ With those priorities in mind, it would be in both the servicewoman's and the Marine Corps' interest not to commission a pregnant servicewoman until after the child's birth due to the possibilities of complications.

Response: The Marine Corps does not take the same attitude toward promoting active duty woman to their next rank. The bias lies in an enlisted servicewoman's transition from the enlisted ranks to commissioned status.

Counter: Technically speaking, an enlisted Marine seeking a commission signs and receives a DD214 form (Discharge of Military Service). This action/completion of the form renders the Marine's contract complete/null. The "former Marine" is now "technically" a civilian. Immediately following the signing of the DD214 form, the Marine then signs a NAVMC 763 (Appointment

¹² Department of Labor. Americans with Disabilities Act of 1990. URL:<www.dol.gov/esa/regs/statues/ofccp/ada.htm>. Accessed 19 February 2008.

¹³ See note 4.

to a Commission) and becomes a commissioned officer. Prior to signing the NAVMC 763, the person to be commissioned is governed by the standing orders/policies of entry/appointment into the military service as any other civilian would be. Therefore, no law that applies to an active duty or reserve servicemember applies to the individual being commissioned.

Response: If an enlisted Marine is commissioned while married to another enlisted Marine, the couple can stay married; even though the relationship by default of the commission becomes fraternization. The Marine Corps needs to take the same logical initiative in the pregnancy policy regarding a commission/appointment of an enlisted female Marine.

Counter: The Marine Corps does not restrict a female Marine's right to have a child. The decision to have a child is made by the individual. The Marine Corps does note that responsibilities come with parenthood, and for those in uniform, these responsibilities require increased consideration and planning due to military commitments. Marines are expected to balance the demands of a naval career with their family plans and responsibilities. The Marine Corps pregnancy policy is clear, logical and nondiscriminatory; however, female Marines have the responsibility to consider how the pregnancy may affect her military requirements and operational readiness.

Response: A pregnant servicewoman's demands at work/home are not different if she is an enlisted servicemember or a commissioned officer. The same responsibilities are taken into account.

Conclusion

Anatomy is not something the Marine Corps can change, but the policies the Marine Corps uses can be written in a clear, logical, and nondiscriminatory manner so that a pregnancy does not hinder the career advancement of a female Marine. The Marine Corps makes logical exceptions to technically unlawful circumstances, i.e., in the case of a dual active duty couple having one member seek a commission while the other remains enlisted. The Marine Corps needs to revise MCO 5000.12E and make it clear, logical, and nondiscriminatory in application to commissioning programs.

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