



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

[REDACTED]
Docket No: 5387-21

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED],
USNR, [REDACTED]

Ref: (a) 10 U.S.C. §1552

(b) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments

(2) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that her naval record be corrected to upgrade her characterization of service and make other conforming changes to her discharge documents from the U.S. Navy Reserve (USNR).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 October 2021, and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

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.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Board determined that Petitioner's personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered Petitioner's case based on the evidence of record.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED],
USNR, [REDACTED]

d. The Petitioner initially enlisted in the USNR on 2 March 1990 for a period of eight (8) years. Following completion of her required active service and initial recruit training in [REDACTED], on 31 August 1990 Petitioner was assigned to the [REDACTED] at Navy-Marine Corps Reserve Center in [REDACTED] (Reserve Center).

e. Petitioner served in the USNR without incident and was a satisfactory participant into 1995. Petitioner's last period of active duty for training (ADT) lasted thirteen days and ended in June 1994, and Petitioner's last observed performance evaluation covered the period from 1 July 1994 to 30 June 1995.

f. Ultimately, on 23 April 1997 the Petitioner was separated by reason of unsatisfactory participation in the USNR with a general (under honorable conditions) (GEN) characterization of service and assigned an RE-4 reentry code. The Reserve Center documented Petitioner's GEN discharge on a "Page 13" Administrative Remarks entry (NAVPERS 1070/613) dated 23 April 1997.

g. However, the administrative separation (Adsep) documents are not in the Petitioner's service record. Additionally, there is no record that the Reserve Center ever attempted to notify Petitioner of her alleged participation discrepancies prior to April 1997. The Petitioner's record is also missing any U.S. Certified Mail Receipt (PS Form 3800), and a sworn affidavit from Reserve Center personnel related to any Adsep documents being sent to Petitioner's home of record. Petitioner's service record is also missing routine USNR documents such as: (a) a statement of service and/or an annual retirement point record; (b) a signed acknowledgment regarding satisfactory USNR performance requirements; and (c) a Navy Standard Integrated Personnel System IDT Detail Report.

h. The Board noted that other than the purported unsatisfactory performance issue surfacing in 1997, there was absolutely no documented misconduct or adverse Page 13 warnings noted in Petitioner's record, and that Petitioner's USNR performance evaluations consistently documented well above average performance.

i. Based on her available service records, Petitioner's overall conduct trait average assigned on her periodic performance evaluations during her enlistment was 3.85. Navy regulations in place at the time of her discharge required a minimum trait average of 2.0 in conduct (proper military behavior), to be eligible and considered for a fully honorable characterization of service.

j. In short, Petitioner requested clemency in the form of a discharge upgrade and to make other conforming changes to her USNR discharge documents. The Petitioner stated she recalled in June of 1996 she served her last drill weekend prior to her completion of service. She described that at the time she was not given or asked to sign any paperwork, and when the drill weekend ended she left, and as far as she knew she was done with her obligated service. The Petitioner stated she first discovered she received a less than honorable USNR discharge characterization when she applied for a job in the federal civil service in 2020 and was seeking a security clearance.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED],
USNR, [REDACTED]

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. Additionally, the Board reviewed her application under the guidance provided in reference (b).

Based on the information contained within the Reserve Center's "Page 13" Administrative Remarks entry regarding Petitioner's discharge, the Board usually would rely on a presumption of regularity to support the official actions of public officials, and given the narrative reason for separation and corresponding reentry codes as stated on such Page 13 entry, the Board routinely would presume in similarly situated cases that Petitioner was properly processed and discharged from the USNR for unsatisfactory participation. However, in the instant case, the Board determined that the complete lack of Adsep records, derogatory information, and/or corroborating service records supporting Petitioner's GEN discharge prevents the Board from summarily relying on any presumption of regularity.

In keeping with the letter and spirit of the Wilkie Memo, the Board concluded that the Petitioner's claim has merit and that corrective action should be taken as outlined below. The Board viewed the evidence in the light most favorable to the Petitioner and concluded that the totality of the circumstances justifies relief given that the Board determined that Petitioner met her burden to rebut the Government's presumption of regularity. The Board also concluded that Petitioner's GEN discharge characterization was unduly harsh given the lack of any misconduct or adverse performance evaluations in the record. The Board believed that Petitioner's discharge characterization should have been based on based, in part, on conduct and overall trait averages computed from marks assigned during periodic evaluations. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under GEN conditions, and that an honorable discharge under these unique circumstances is appropriate at this time based strictly on clemency grounds.

Given the recommended relief as outlined below, the Board noted that Petitioner will likely now have the option to reenlist in the USNR should she choose to do so. The Board determined that recruiting personnel will be responsible for determining whether Petitioner meets the current standards for reenlistment and whether or not her reenlistment is feasible.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

That Petitioner's existing "Page 13" Administrative Remarks NAVPERS 1070/613 entry dated 23 April 1997 documenting her USNR GEN discharge characterization be removed from her service record, as well as any existing "Record of Discharge from the U.S. Naval Reserve (Inactive)" (NAVPERS 1070/615) documenting her USNR GEN discharge be removed from her service record, if applicable.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED],
USNR, [REDACTED]

That upon Petitioner's USNR discharge, her characterization of service be changed to "Honorable," the separation authority be changed to "MILPERSMAN 1910-164," the separation code be changed to "JFF," the narrative reason for separation should be changed to "Secretarial Authority," and the reentry code be changed to "RE-1."

That Petitioner be issued a new "Page 13" Administrative Remarks NAVPERS 1070/613 entry documenting her USNR discharge on 23 April 1997 (or other equivalent discharge record utilized for USNR personnel), reflecting the Board changes noted above.

That Petitioner, if applicable, be issued a new NAVPERS 1070/615 documenting her USNR discharge on 23 April 1997 (or other equivalent discharge record utilized for USNR personnel), reflecting the Board changes noted above.

That a copy of this report of proceedings be filed in 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/21/2021

