



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

██████████
Docket No. 5696-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████
██████████ USMC

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

Encl: (1) DD Form 149 w/attachments
(2) Administrative Remarks (Page 11) promotion-restriction/3rd Quarter 2018 of 15 May 18
(3) Administrative Remarks (Page 11) promotion-restriction/June [2018] of 15 May 18
(4) Administrative Remarks (Page 11) promotion-restriction/April-June 2019 of 11 Apr 19
(5) Administrative Remarks (Page 11) violation of Article 86, UCMJ of 12 Jul 19
(6) Administrative Remarks (Page 11) promotion-restriction/September 2019 of 25 Sep 19
(7) Administrative Remarks (Page 11) violation of Article 86, UCMJ of 3 Jan 20
(8) Administrative Remarks (Page 11) promotion-restriction/February [2020] of 15 Jan 20
(9) UPB of 4 Feb 20
(10) Administrative Remarks (Page 11) 6105 counseling of 4 Feb 20 and
6-month promotion-restriction counseling of 4 Feb 20
(11) Administrative Remarks (Page 11) violation of Article 86, UCMJ of 5 Mar 20
(12) UPB of 12 Mar 20
(13) Administrative Remarks (Page 11) 6105 counseling of 12 Mar 20 and
6-month promotion-restriction counseling of 12 Mar 20
(14) Notification of Separation Proceedings of 13 Mar 20
(15) Chronological Record of Medical Care of 25 Mar 20
(16) Connected Counseling Community Center ltr of 9 Jun 20
(17) Group Aid Station, ██████████ tr 6300 GAS of 17 Jun 20
(18) Administrative Remarks (Page 11) 6105 counseling of 6 Aug 20
(19) PEB findings of 14 May 21
(20) DD Form 214
(21) Advisor Advisory Opinion of 18 Jan 22

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 naval record be corrected by (1) removing her nonjudicial punishments (NJP) imposed on 4 February 2020 and 12 March 2020; (2) removing adverse Administrative Remarks (Page 11) counseling entries; (3) directing her promotion from lance corporal to corporal; and (4) retroactively compensate her commensurate with the date she was reduced in grade.

2. The Board consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 10 March 2022 and, pursuant to its regulations, determined that the corrective

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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 Petitioner's naval record, and applicable statutes, regulations, and policies.

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. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 30 January 2017. While in basic training, Petitioner purportedly slammed her head against a bed rack, causing her continuous headaches, memory issues, balance problems, sleep disturbances, and concentration problems. Petitioner did not immediately seek medical attention for her head injury, and the injury was not documented in her medical record during basic training.

c. Petitioner's record reflects that on 15 May 2018, she was issued two Page 11 promotion non-recommendation to corporal counseling entries for the 3rd quarter 2018 for not being Professional Military Education (PME) complete, and for June 2019 (should be June 2018) due to a lack of Military Occupational Specialty (MOS) experience and leadership. Petitioner declined to provide a written rebuttal to either counseling. Enclosures (2)—(3).

d. In October 2018, Petitioner transferred to Operations Company. According to counsel, Petitioner experienced "aggressive leadership" that severely exacerbated her underlying conditions and symptoms of her traumatic brain injury (TBI). Enclosure (1).

e. On 11 April 2019, Petitioner was issued a Page 11, non-recommending her for promotion to corporal for the months of April, May, and June 2019 for lack of MOS experience and leadership. Petitioner declined to provide a written rebuttal. Enclosure (4).

f. On 12 July 2019, Petitioner was issued a Page 11 counseling entry for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for being late to her appointed place of duty; the rifle range. Petitioner was advised that further discrepancies would result in disciplinary action. Petitioner declined to provide a written rebuttal. Enclosure (5).

g. On 25 September 2019, Petitioner was issued a Page 11, non-recommending her for promotion to corporal for the month of September 2019 for lack of judgement and maturity, and for the counseling received during this period. Petitioner declined to provide a written rebuttal. Enclosure (6).

h. On 3 January 2020, Petitioner was issued a Page 11 counseling entry concerning her missing a scheduled medical appointment. Petitioner declined to provide a written rebuttal. Enclosure (7).

i. On 15 January 2020, Petitioner was issued a Page 11, non-recommending her for promotion to Corporal for the month of February [2020] for lack of judgement and maturity, the counseling received during this period, and for not being PME complete. Petitioner declined to provide a written rebuttal. Enclosure (8).

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j. On 4 February 2020, Petitioner received NJP for violation of Article 86, UCMJ for being in an unauthorized absence (UA) status. She was awarded seven days restriction and 30 days extra duties; both were suspended for six months; however, the suspension was later vacated. Petitioner was advised of her right to appeal the NJP; she did not appeal. On 4 February 2020, Petitioner was also issued two Page 11s concerning the company-level NJP and non-recommendation for promotion to corporal due the her violation of Article 86, UCMJ. Additionally, because of the NJP, Petitioner was on a 6-month promotion restriction status. Petitioner declined to provide a written rebuttal to either counseling. Enclosures (9)—(10).

k. On 5 March 2020, Petitioner was issued a Page 11 counseling her for being absent without leave from a scheduled medical appointment and for failing to show up to a post-96 formation. Petitioner indicated in the Page 11 entry that she intended to submit a written rebuttal, but her rebuttal was not included in her application nor in her official military personnel file (OMPF). Enclosure (11).

l. On 12 March 2020, Petitioner received NJP for violation of Article 92, UCMJ for two specifications of failure to obey an order or regulation. The punishment awarded was reduction in grade from lance corporal/E-3 to private first class/E-2, forfeiture of pay for two months, restriction and 45 days extra duties, to run concurrently. The forfeiture of pay and extra duties were suspended for six months; however, the suspension was later vacated. Petitioner was advised of her right to appeal the NJP; she did not appeal. On 12 March 2020, Petitioner was also issued two Page 11's concerning the Battalion-level NJP and promotion restriction to Corporal for six months due to the NJP. Petitioner did not provide a rebuttal statement. Enclosures (12)—(13).

m. On 13 March 2020, Petitioner was notified of separation proceedings by reason of misconduct due to minor disciplinary infractions. Petitioner was advised of due process rights. During her separation physical, Petitioner raised issues of TBI symptoms and was referred to Intrepid Concussion Recovery Center for an evaluation. Enclosure (14).

n. On 26 March 2020, Petitioner underwent a neurology/TBI evaluation to "evaluate for any underlying concerning abnormality of head" due to her memory issues and headaches following her head injury sustained during basic training. The impressions was that there was no acute intracranial findings. Enclosure (15).

o. On 9 June 2020, the Connected Counseling Community Center diagnosed Petitioner with Post Traumatic Stress Disorder (PTSD) with dissociative symptoms of depersonalization, and noted that Petitioner had been seen by the Center since 13 May 2020. Enclosure (16).

p. On 17 June 2020, the Group Aid [REDACTED] Marine Expeditionary Force Medical conducted a medical evaluation of Petitioner and determined that she has a history of signs/symptoms of PTSD/TBI. The TBI diagnosis was deemed non-contributory to administrative separation, and she was not diagnosed with PTSD. Petitioner was found physically qualified for separation. Enclosure (17).

q. On 6 August 2020, Petitioner was issued a Page 11 counseling her for violation of Article 86, and Article 92, UCMJ for being absent without leave and failure to obey an order or regulation. Petitioner was also advised that she was being processed for administrative separation. Petitioner indicated in the Page 11 entry that she intended to submit a written rebuttal, but her rebuttal was not included in her application nor in her OMPF. Enclosure (18).

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r. Petitioner, through counsel, requested referral into the Integrated Disability Evaluation System (IDES). On 14 May 2021, a Physical Evaluation Board convened and found Petitioner to be unfit for duty and recommended separation from active duty with severance pay with a combined disability rating of 10%. The unfitting condition was noted as personal history of TBI. Enclosure (19).

s. On 15 September 2021, Petitioner was discharged with an Honorable characterization of service by reason of disability, severance pay, not combat related, through the IDES. Enclosure (20).

t. In her application, Petitioner, through counsel, contends the NJPs and counselings were the result of direct manifestations of symptoms from her serious diagnosed conditions, the behavior never should have been considered misconduct, and for it to continue to be categorized in such a manner is an injustice. Petitioner also contends that for two years, she had been treated as if she was a substandard Marine and her frequent episodes of being late were never properly assessed. Petitioner further asserts that the extensive DES and Medical Evaluation Board process validated what she has been reporting all along: that her in-service-connected conditions and symptoms are not compatible with military service. Counsel further asserts that if Petitioner never had these conditions, then the underlying behavior which caused her punishment never would have occurred.

u. As part of the review process, a qualified mental health professional provided a favorable advisory opinion (AO) for the Board's consideration. The AO noted Petitioner's in-service records revealed a history of head injury and persistent symptoms consistent with TBI for which she was found medically unfit and medically discharged with a 10% disability rating (severance pay and discharge). The Department of Veterans Affairs (VA) also found her condition to be service connected and awarded a 70% disability rating for PTSD with General Anxiety, Persistent Depression, and TBI, as well as Narcolepsy at 10%. The AO also noted that her misconduct of unauthorized absences, failure to follow orders (wrong uniform on duty) and insubordination, occurred after her head injury and during the period of her complaints of symptoms consistent with TBI, and could be attributed to her sleep/memory/concentration impairment, as well as irritability (which are symptoms found in her in-service medical records). The AO concluded that there was sufficient objective evidence that Petitioner incurred TBI/PTSD during her military service, and that her in-service misconduct could be attributed to psychological/behavioral changes from her TBI/PTSD. Enclosure (21).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concurred with the AO and concluded that Petitioner's request warrants partial relief. The Board reviewed Petitioner's application under the guidance provided in reference (b). In this regard, the Board noted Petitioner's continuous misconduct, however, based upon Petitioner's overall record, to include the relevant issues raised, the Board, applying liberal consideration and the factors outlined in reference (b), concluded that it found sufficient evidence of an injustice. Specifically, Petitioner suffered a TBI early on in her career and unbeknownst to her, the serious side effects led to in-service misconduct that would not have occurred if those symptoms of TBI were not present or if she would have known to seek medical attention at the onset of her head injury.

With regards to Petitioner's request for promotion to corporal, the Board determined that it did not have sufficient information to make an informed decision as to when she would have met the requisite cutting score for promotion or what her date of rank would have been had she not been issued the non-recommendation counselings or reduction in grade due to NJP, and Petitioner provided no supporting documentation to support said promotion to corporal. However, the Board determined that an audit of her

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record shall be conducted to determine if Petitioner would have met all requirements to be promoted to corporal.

RECOMMENDATION

In view of the foregoing, the Board directs the following corrective action:

Petitioner's naval record be corrected by removing the Page 11 counseling entries at enclosures (2) through (8), as well as enclosures (10), (11), (13), and (18).

Petitioner's naval record be corrected by removing the 4 February 2020 and 12 March 2020 Unit Punishment Book entries at enclosures (9) and (12), respectively. Any forfeitures or rank adjustments will be corrected and paid to Petitioner.

Petitioner's DD Form 214 will be corrected, specifically, date of rank, block 12i to reflect 2017 (Year) 10 (Month) 01 (Day) vice 2020 (Year) 12 (Month) 01 (Day). Petitioner will be issued a DD Form 2015 to reflect said change and all monies will be paid based on this adjustment.

Headquarters Marine Corps (MMPR-2) will conduct an audit and determine that Petitioner would have met [a]ll requirements to be promoted to corporal. Note: If MMPR-2 determines that Petitioner should have been promoted to corporal, Petitioner will be issued a DD Form 215 correcting her DD Form 214. Specifically, block 4a as Cpl vice LCpl, block 4b as E4 vice E3, and block 12i determined by MMPR-2 audit, and all monies will be paid based on this adjustment.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

The Defense Finance and Accounting Service (DFAS) complete an audit of Petitioner's records and make payment of any money that Petitioner may be entitled.

No further action be granted.

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 Regulation, 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.

4/5/2022

