



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

[REDACTED]  
Docket No: 7163-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,  
XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016  
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)  
(e) 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), 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 to upgrade her characterization of service and to make other conforming changes to her DD Form 214.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 4 March 2022, 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency

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determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider.

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 Petitioner enlisted in the Navy and began a period of active service on 17 September 2001. Petitioner's pre-enlistment physical on 5 April 2000 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Petitioner admitted pre-service marijuana and other drug use on their enlistment application.

d. In early May 2004 Petitioner was diagnosed with bipolar II disorder, as well as antisocial and borderline personality traits. The evaluating Navy Medical Officer determined Petitioner was unfit for duty at such time and recommended she be placed in limited duty (LIMDU) status.

e. In August 2004 Petitioner entered the Substance Abuse Rehabilitation Program for alcohol abuse at Naval Hospital [REDACTED]. Petitioner was diagnosed with alcohol dependence without physiological dependence, and bipolar disorder type II. Petitioner completed her treatment regimen on 31 August 2004.

f. While in a LIMDU status Petitioner was subjected to a drug test and her sample tested positive for cocaine. Petitioner was notified she was being processed for an administrative discharge by reason of misconduct due to drug abuse. Based on information in Petitioner's service record, she waived her right to present her case to an administrative separation board. Ultimately, on 3 September 2004 Petitioner was discharged from the Navy for drug abuse with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

g. In short, Petitioner contended that she was suffering from unfitting mental health issues on active duty. Petitioner also contested whether Petitioner was ever properly notified of her proposed administrative separation and provided an opportunity to elect her rights in connection with the administrative separation given that such documents were not in Petitioner's service record. Petitioner argued that an upgrade should be granted based on equity, due process concerns, and exemplary post-service conduct in light of current Department of Defense guidance.

h. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 22 December 2021. The Ph.D. initially observed that Petitioner's active duty service records contained evidence of a diagnosis of a mental health condition and/or reported

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psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. The Ph.D. concluded by opining that there was sufficient evidence Petitioner exhibited behaviors associated with a mental health condition on active duty, however, her mental health condition failed to mitigate her drug use. The Petitioner submitted a AO rebuttal on 8 February 2022. Despite the AO rebuttal, the Ph.D. still opined that there remained a lack of evidence of any nexus between Petitioner's mental health condition and her misconduct. The Ph.D. also opined that the evidence failed to establish her misconduct was mitigated by her mental health condition.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants relief. Additionally, the Board reviewed her application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

First and foremost, the Board concluded any due process arguments because certain records were missing from Petitioner's service record lacked merit. The Board relied on a presumption of regularity to support the official actions of public officers, and given the separation authority and corresponding separation code as stated on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), the Board presumed Petitioner was properly processed and discharged from the Navy due to drug-related misconduct after waiving her right to an administrative separation board.

However, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone the wrongful use of controlled substances, the Board determined contrary to the AO that Petitioner's mental health issues mitigated the misconduct used to characterize her discharge. The Board concluded that the Petitioner's mental health conditions and/or symptoms as possible causative factors in the misconduct underlying her discharge and characterization were not outweighed by the severity of Petitioner's drug-related misconduct. The Board also noted Petitioner's difficult life experiences and determination to overcome such trying circumstances, her exemplary post-service conduct, and her impressive educational and career achievements. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) is appropriate at this time.

The Board was not willing to grant a full upgrade to an honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of her military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge and no higher was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for her conduct or that she should not be held accountable for her actions. Moreover, absent a material error or injustice, the Board

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generally will not summarily upgrade a discharge to Honorable solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Lastly, in light of the Wilkie Memo, and while not necessarily excusing or endorsing the Petitioner's drug-related misconduct, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a discharge upgrade to GEN and no higher.

The Board also concluded that other than the specific relief outlined below on the DD Form 214, that Petitioner's blanket request to change/correct all other records relating to her discharge be denied.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," the separation code be changed to "JFF," and the reentry code be changed to "RE-1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

3/7/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]