



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

[REDACTED]  
Docket No: 434-22  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. §1552  
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)  
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)  
(d) USD Memo of 25 Aug 17 (Kurta Memo)  
(e) USECDEF Memo of 25 Jul 18 (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 discharge. In addition, Petitioner requested “payback” for lost benefits.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 June 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 determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider. Although the Petitioner was provided an opportunity to submit an AO rebuttal, she did not do so.

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.

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b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner originally enlisted in the U.S. Navy Reserve, on 30 September 1994, at the age of twenty-seven. Petitioner was initially assigned in a pay status to the [REDACTED] unit attached to the Naval Reserve Readiness Center, [REDACTED] (NRRC [REDACTED])

d. On 15 March 1995, NRRC [REDACTED] issued Petitioner transfer orders from an "in pay" status to a "non-pay" status. The transfer orders stated Petitioner was under investigation for a possible fraudulent enlistment.

e. On 1 June 1995, Petitioner underwent a psychology evaluation to determine her suitability for retention in the USNR. During the evaluation, the Navy Medical Officer (NMO) noted that Petitioner failed to disclose at the time of her enlistment a suicide attempt by overdose as a teenager and a pre-service psychiatric hospitalization resulting in a major depression diagnosis. The NMO opined that had Petitioner reported her complete mental health history at the time of her enlistment, she probably would have been not qualified for enlistment. The NMO did not make a personality disorder diagnosis, and declined to make a specific mental health diagnosis at the conclusion of the evaluation. The NMO concluded by stating that it was in both the Petitioner's and Navy's best interest not to retain her in the USNR.

f. On 7 July 1995, the Commanding Officer (CO) of NRRC Dallas notified Petitioner of administrative separation proceedings by reason of the convenience of the government due to personality disorder and failure to disclose information at the time of enlistment. The least favorable discharge characterization Petitioner could receive was a General (Under Honorable Conditions) (GEN). The CO mailed the administrative separation notification and an election of rights form to the Petitioner's last known home address via certified mail (return receipt requested). The Petitioner failed to exercise her rights in connection with the proposed administrative separation within the time prescribed which acted as a waiver of her rights in connection with the administrative separation. On 24 August 1995, the CO recommended to the Bureau of Naval Personnel that Petitioner receive a GEN discharge characterization.

g. However, on 16 October 1995, NRRC [REDACTED] issued Petitioner a "Page 13" Administrative Remarks (NAVPERS 1070/613) (Page 13) erroneously documenting her USNR discharge as a "Dishonorable Discharge due to Misconduct: Personality Disorder." The Page 13 also contained a negative reenlistment recommendation which acted as the equivalent of an RE-4 reentry code.

h. In short, the Petitioner contended that her discharge was wrongful and was based on a report to NRRC [REDACTED] by a disgruntled ex-boyfriend that she had a psychiatric history and was a homosexual.

i. 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 27 April 2022. The Ph.D. stated in pertinent part:

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Separation records indicate the Petitioner was diagnosed with a personality disorder, indicating lifelong characterological traits rendering military service unsuitable to her. Postservice, she has provided evidence of diagnoses of a substance use disorder, Generalized Anxiety Disorder, and Schizoaffective Disorder. Unfortunately, her personal statement and provided medical records are temporally remote from her military service and not sufficiently detailed to establish a nexus with her misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, onset, and their specific link to her misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that her misconduct could be attributed to a mental health condition.”

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

First and foremost, the Board noted that Petitioner did not provide any substantiating evidence to corroborate her contention that she was discriminated against and discharged for being a homosexual. Thus, the Board was not persuaded to set aside her discharge or award any back pay for the years of benefits lost since her USNR separation. In making this finding, the Board considered the mental health evaluation conducted in June 1995. This evaluation documents Petitioner's preservice mental health treatment and her failure to disclose her medical history during her enlistment processing. Based on this evidence and her administrative separation processing documents, the Board found that Petitioner was not processed or separated for homosexuality. Accordingly, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that, given the totality of the circumstances, Petitioner's request to upgrade her discharge and be awarded back pay does not merit relief on the basis of purported homosexuality.

Notwithstanding, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the Page 13 Petitioner received upon her USNR separation.

Moreover, the Board determined that Petitioner's characterization of service was erroneous and warranted a change. The Board noted that the least favorable characterization Petitioner was eligible to receive for her listed bases of separation was GEN, and the Board further noted that the NRRC [REDACTED] CO recommended Petitioner receive a GEN characterization. Additionally, the Board noted that a dishonorable discharge is a punitive, and not an administrative discharge, and



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can only be awarded by a military judge at a court-martial, and thus was inapplicable to Petitioner's factual situation.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of her circumstances involving a fraudulent enlistment, and that such reentry code was proper and in compliance with all Navy directives and policy at the time of her discharge.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

That Petitioner shall be issued a new NAVPERS 1070, dated 16 October 1995, consistent with the following information:

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," a narrative reason for separation of "Secretarial Authority," a separation authority of "MILPERSMAN 1910-164," a separation code of "JFF," and a reentry code of "RE-4."

That the original NAVPERS 1070/613 Administrative Remarks entry dated 16 October 1995 reflecting a dishonorable discharge be removed from Petitioner's service record.

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.

7/1/2022

[REDACTED]

Executive Director

Signed by [REDACTED]