



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

[REDACTED]
Docket No. 1808-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] [REDACTED]
[REDACTED] XXX XX [REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USD Memo of 25 July 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/enclosures
(2) Advisory opinion, 26 April 2022
(3) Response to advisory opinion, 27 May 2022
(4) Review of response to advisory opinion, 1 June 2022
(5) Administrative Remarks (Page 11), 10 August 2001
(6) Naval Discharge Review Board decision, 29 October 2004
(7) Administrative Remarks (6105), 7 April 2003
(8) DD Form 214, ending on 13 June 2003

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 discharge characterization be upgraded from General (Under Honorable Conditions) to honorable, and the narrative reason for separation and corresponding separation authority and codes be changed.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 25 July 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (a) through (e) and the advisory opinion (AO), enclosure (2), furnished by a qualified mental health professional, and your attorney's response to the AO, enclosure (3).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

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b. Petitioner enlisted in the Marine Corps and commenced a period of active duty on 5 December 2000. In connection with her enlistment, she acknowledged pre-service experimental marijuana use and denied mental health symptoms, enclosure (2). On 10 August 2001, Petitioner was formally counseled for failing her physical fitness test, enclosure (5).

c. In February 2002, the Petitioner was diagnosed with alcohol dependence with physiological dependence, enclosure (6).¹ In June 2002, Petitioner submitted a formal Equal Opportunity (EO) complaint concerning inappropriate questions regarding her sexual orientation, enclosure (2). In November 2002, she was diagnosed with Adjustment Disorder with mixed disturbances of emotions and conduct, Alcohol Abuse, and Personality Disorder Not Otherwise Specified with borderline features, enclosure (6).

d. On 3 March 2003, Petitioner received nonjudicial punishment for wrongful use of a controlled substance (cocaine), making a false official statement, and wrongful appropriation. In April 2003, she was formally counseled for a pattern of misconduct due to unauthorized absence from her place of duty and treatment failure for inpatient alcohol rehabilitation, enclosures (6) and (7).

e. On 13 June 2003, Petitioner was discharged with a General (Under Honorable Conditions) characterization of service by reason of misconduct, and assigned a reentry code of RE-4B, which is assigned when there is a military record of in-service illegal drug involvement and there is no potential for future service. *Id.* Enclosure (8). Petitioner's complete discharge package is not available in her official military personnel file.

f. In 2004, Petitioner filed an application with the Naval Discharge Review Board (NDRB), in which she contended that her command treated her unfairly, and that she "committed fraud and larceny because I lied on a travel claim." She also denied any use of cocaine, and asserted the urinalysis procedure was done incorrectly. The NDRB denied Petitioner's application, enclosure (6).

g. In her petition, the Petitioner contends that she was ultimately diagnosed with Post-traumatic stress disorder (PTSD) by the U.S. Department of Veterans Affairs, which determined the PTSD was service connected. According to the Petitioner, her PTSD, Major Depressive Disorder, and suicidal ideations, which existed at the time of the conduct that precipitated her discharge, serve to excuse and mitigate the misconduct that resulted in her General (Under Honorable Conditions) characterization of service. In light of the service connection finding by the VA, Petitioner seeks to have her discharge be upgraded to Honorable, and the narrative reason for separation and corresponding codes be changed as a matter of both propriety and equity, enclosure (1).

h. To assist it in reviewing her petition, the Board obtained the enclosure (2) AO, which was considered unfavorable to the Petitioner. According to the AO,

¹ Some information is derived from the 2004 NDRB decision as an available source of information due to not all information available in Official Military Personnel File.

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Petitioner has submitted evidence of diagnoses of Adjustment Disorder and Major Depressive Disorder during military service. Post-service, the VA has also determined service connection for PTSD. Unfortunately, there are inconsistencies in her record that make it difficult to attribute her misconduct to PTSD or another mental health condition. Upon affiliation with the USMC, she denied any history of mental health concerns but medical records provided during and after military service, reference a suicide attempt at age 15. Additionally, she denied cocaine use in 2004 and claimed that the positive urinalysis result was erroneous. Finally, she acknowledged completion of a fraudulent travel claim, which is not a symptom of a mental health condition. There is no evidence that she was not competent or responsible for her behavior during her military service. Additional records (e.g., medical records describing the Petitioner's diagnosis, symptoms, and a specific link to her misconduct) are required to render an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence of other mental health conditions (depression and adjustment disorder) that may be attributed to military service. There is insufficient evidence that her misconduct could be attributed to PTSD or another mental health condition."

i. Petitioner provided a rebuttal to the AO, in which she argued, among other things, that the AO employed the incorrect standard when she required the Petitioner to provide records containing a diagnosis with a "specific link to [Petitioner's] misconduct." Petitioner's rebuttal was reviewed by the drafter of the AO, who concluded, "I have reviewed Petitioner's additional documents. Original Advisory Opinion stands." Enclosures (3) and (4).

CONCLUSION

In view of the foregoing, in light of references (b) through (d), and in particular, reference (e) relating to clemency, the Board concluded that Petitioner's requested relief shall be granted in part, on the basis of equity and injustice. In reaching its decision, the Board acknowledged the finding of the AO, and considered the Petitioner's rebuttal to the AO. The Board was not willing to grant Petitioner's request to change her reentry code from RE-4B because there was no evidence in the record, and Petitioner submitted none, that demonstrated the code is in error or unjust, or that she has any future potential for future service.

Significantly, however, the Board gave weight to the documented mental health conditions for which the Petitioner had been diagnosed with while she was in service, which included a 2002 diagnosis of Adjustment Disorder, alcohol abuse, Personality Disorder with borderline features, and consideration for a recommendation for separation from service at that time, which would have presumably been for a non-misconduct based discharge. Despite the AO's finding of a lack of nexus between the Petitioner's mental health condition and her misconduct, the Board determined that the overall quantity and quality of the materials demonstrating the difficulties with which Petitioner was struggling, weighed in favor of granting the Petitioner clemency in the form of upgrading her discharge to honorable and the associated relief as described below.

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RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

Petitioner be issued a new DD Form 214 reflecting that her characterization of service at the time of her discharge was Honorable, "Secretarial Authority" narrative reason for separation, "MARCORSEPMAN Par. 6214" separation authority, and "JFF1" separation code.

That Petitioner be issued an honorable discharge certificate.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings shall 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.

8/31/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]