



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

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Docket No: 5000-22  
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
[CURRENTLY KNOWN AS █], USNR, █

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," 3 September 2014  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requestes Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)," 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," 25 August 2017  
(e) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments  
(2) DD Form 214  
(3) Standard Form 600, Health Record – Chronological Record of Medical Care, 1 April 1999  
(4) Court Memorandum P601-6R, 30 August 1999  
(5) Standard Form 600, Health Record – Chronological Record of Medical Care, 30 August 1999  
(6) NAVPERS 1070/613, Administrative Remarks, 17 October 1999  
(7) █ Command DAPA Memo, subj: Recommendation for Disposition ICO [Petitioner], 16 February 2000  
(8) Court Memorandum P601-7R, 15 April 2000  
(9) Court Memorandum P601-7R, 22 July 2000  
(10) Summary to testimony, 19 June 2000  
(11) Administrative Separation Processing Notice – Administrative Board Procedure, 10 July 2000  
(12) █ CO Memo 1910 Ser 20/517, subj: [Petitioner]; Recommendation for Administrative Separation, 26 July 2000

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[PRESENTLY [REDACTED]], USNR, [REDACTED]

- (13) [REDACTED] Msg, subj: Admin Discharge ICO [Petitioner],  
dtg 211402Z Aug 00
- (14) BCNR Memo Docket No: NR20220005000, subj: Advisory Opinion ICO  
[Petitioner], 31 August 2022
- (15) Petitioner's Rebuttal Letter, 27 September 2022

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, hereinafter referred to as the Board, requesting that her characterization of service be upgraded to honorable.
2. The Board reviewed Petitioner's allegations of error or injustice on 24 October 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) – (e).
3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:
  - a. Petitioner has 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 interest of justice to waive the statute of limitations and review Petitioner's application on its merits.
  - c. Petitioner enlisted in the Navy and began a period of active duty service on 29 September 1998. See enclosure (2).
  - d. In April 1999, Petitioner sought treatment for sleeping difficulties. She was diagnosed with a sleep disorder secondary to poor sleep hygiene. See enclosure (3).
  - e. Petitioner was in an unauthorized absence (UA) status from her from 12 August 1999 until she surrendered on 30 August 1999. See enclosure (4).
  - f. Upon her return from UA, Petitioner received a psychiatric evaluation after an unsuccessful suicide attempt during his absence.<sup>1</sup> Among the stressors reported by Petitioner was that she found out that her girlfriend was pregnant, she had wrecked her uninsured car, and a \$12,000 debt. She also reported work stresses from multiple supervisors, and that she had twice previously attempted suicide in 1996 for similar stressors (primarily debt). The mental health provider did not record a diagnosis, but recorded his impression as a "Phase of Life Problem." Petitioner was deemed fit for full duty. See enclosure (5).
  - g. On 14 October 1999, Petitioner received nonjudicial punishment (NJP) for the UA discussed in paragraph 3e above. She received extra duty and was restricted for 20 days, 10 of

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<sup>1</sup> Petitioner asserts in enclosure (1) that she took pills with alcohol in the hopes of never waking up.

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which were suspended for three months. See enclosure (6).

h. On 11 January 2000, Petitioner refused to attend Level III substance abuse treatment. See enclosure (7).

i. Petitioner was in an UA status from 16 January 2000 to 25 January 2000. See enclosure (8).

j. By memorandum dated 16 February 2000, the Drug and Alcohol Program Advisor (DAPA) for Petitioner's ship reported the results of a departmental DAPA screening based upon her 11 January 2000 treatment refusal. During this screening, Petitioner asserted that her most recent UA was caused by the stress of being required to undergo the refused treatment. The DAPA recommended that Petitioner be administratively separated after completing NJP for her UA. See enclosure (7).

k. Petitioner was in an UA status from 8 February 2000 to 23 February 2000, and again from 29 February 2000 to 15 March 2000. During the former period of UA, Petitioner missed her ship's movement on 9 February 2000. See enclosure (8).

l. On 21 March 2000, Petitioner was convicted by a summary court-martial (SCM), pursuant to his pleas, of three specifications of UA, in violation of Article 86, Uniform Code of Military Justice (UCMJ), and missing ship's movement, in violation of Article 87, UCMJ.<sup>2</sup> She was sentenced to 30 days of confinement and reduction in rank to E-1. See enclosure (8).

m. On 19 June 2000, Petitioner was convicted by a second SCM of UA from 1 May 2000 to 2 June 2000 in violation of Article 86, UCMJ, and missing ship's movement on 1 May 2000 in violation of Article 87, UCMJ. She was sentenced to 24 days of confinement and forfeiture of \$300 per month for one month. See enclosure (9). Petitioner testified under oath during her SCM hearing that she does not like the Navy and wanted to go to school to become a licensed practical nurse. She further stated that her decision to join the Navy was rushed, and that she thought that she would be working near her home. With regard to the offenses, Petitioner explained that she had missed the bus back to [REDACTED] on 30 April 2000 and instead drove her fiancée's car. When he arrived, she was lead to believe that the car was likely to get towed if he boarded the ship, and she could not find anyone to assist her. Frustrated with the lack of any assistance, she decided to return to [REDACTED] to be with her fiancée. See enclosure (10).

n. On 10 July 2000, Petitioner was notified that administrative separation proceedings were being initiated based upon her pattern of misconduct, commission of a serious offense, and alcohol abuse rehabilitation failure. See enclosure (11).

o. On 10 July 2000, Petitioner waived her right to consult with counsel and to request an administrative separation board. See enclosure (11).

p. By memorandum dated 26 July 2000, Petitioner's commander recommended that

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<sup>2</sup> These offenses were those discussed in paragraphs 3i and 3k.

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Petitioner be administratively separated from the Navy under other than honorable (OTH) conditions for a pattern of misconduct. See enclosure (12).

q. By message dated 21 August 2000, the separation authority directed that Petitioner be administratively separated from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (13).

r. On 31 August 2000, Petitioner was discharged from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (2).

s. Petitioner contends that her mental health struggles continued after her discharge from the Navy. She was married at the age of 26, and raised three children with her former spouse. She asserts that her alcoholism and depression took hold of her through the years, as she used alcohol to mask the hurt and insecurity she felt throughout her life. When she came out as transgender in 2019, her wife divorced and her kids abandoned her, after which she was arrested for driving under the influence of alcohol. See enclosure (1).

t. In recent years, Petitioner has completed a residential substance abuse rehabilitation program, participated in weekly therapy focusing on her mental health and understanding her gender identity, and transitioned to her preferred gender. She also reports productive employment as a Behavioral Health Assistant, as well as a history of significant volunteer work in her community. See enclosure (1).

u. Petitioner asserts that at the time of her service she was a young male who “struggled with alcoholism, undiagnosed mental health, undiagnosed [post-traumatic stress disorder (PTSD)], undiagnosed anxiety and depression,” as well as with her gender identity. Although she previously stated that she did not want to be in the Navy, she knows deep down that she really did. She enjoyed being at sea with her shipmates onboard the first nuclear aircraft carrier, and she strived for early promotion. She claims to be an outstanding citizen and works as a supervisor in the drug and alcohol treatment field. She also claims to do volunteer work for many organizations promoting equality and Christianity, as well as motivational speaking. See enclosure (1).

v. Because Petitioner based her claim for relief in whole or in part upon her claim of PTSD and other mental health conditions, her application and records were reviewed by a qualified mental health professional who provided an advisory opinion (AO) for the Board’s consideration. The AO noted that Petitioner provided evidence of post-service mental health treatment from January 2019 to March 2022 for “diagnoses of Major Depressive Disorder, Gender Dysphoria, and Alcohol use disorder,” and that her civilian psychiatrist stated that Petitioner “was unable to disclose that her distress during her military service was due to gender dysphoria rather than a ‘phase of life’ problem” due to concerns regarding “discrimination and forced release.” Regarding her in-service records, the AO found that Petitioner was appropriately referred for psychological evaluation during her enlistment and properly evaluated over multiple clinical encounters, during which she was diagnosed with alcohol use disorder. The AO found no evidence to support her contention of PTSD. The AO noted that it is possible that the concerns raised by Petitioner during her service which were identified as a “Phase of

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Life” problem were actually symptoms of gender dysphoria, given the passage of time and improved understanding of mental health conditions. However, the AO found the Petitioner’s personal statement and available records to be insufficiently detailed to establish a nexus with her misconduct, particularly given her repeated UAs, in-service statements, and refusal of treatment for alcohol use disorder. The AO ultimately concluded that there is insufficient evidence of PTSD attributable to military service; that there is post-service evidence of gender dysphoria that may be attributed to military service; and that there is insufficient evidence that Petitioner’s misconduct could be attributed to any mental health condition. See enclosure (14).

w. By letter dated 27 September 2022, Petitioner provided a rebuttal to the AO referenced above. In response to the AO’s finding of insufficient evidence of PTSD, Petitioner asserted that she was diagnosed with PTSD after her discharge from the Navy and was under the assumption that she was expected to claim all current and former diagnoses for a discharge upgrade request. She admits that she has no clinical documentation to back up her assertion of this diagnosis, but insists that she did have PTSD while in the Navy. This rebuttal focused on the misdiagnosis made by Navy mental health providers. She asserts that she was diagnosed with a “Phase of Life” problem and found fit for full duty, but that the suicide attempt for which she was evaluated suggests that she was not fit and was struggling with significant mental health issues. If she had been provided proper treatment and therapy, she may have stayed in the Navy and retired from the service. She could not, however, voice all of her mental health concerns at the time due to the “Don’t Ask, Don’t Tell” (DADT) policy in place, which would have resulted in her discharge. See enclosure (15).

**MAJORITY CONCLUSION:**

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that partial relief is warranted in the interest of justice.

Because she based her claim for relief in whole or in part upon her reported PTSD and other mental health conditions, the Majority reviewed Petitioner’s application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to the Petitioner’s claimed mental health conditions and the effect that they may have had upon the misconduct for which she was discharged. Even applying liberal consideration, the Majority found insufficient evidence that Petitioner suffered from PTSD while in the Navy as she claimed. In addition to the lack of any clinical evidence of such a diagnosis, Petitioner also failed to provide any explanation of the triggering traumatic event or events during her military service which would have produced this condition. Additionally, none of the documentation provided by Petitioner’s mental health providers regarding her more recent mental health treatment made any reference to a PTSD diagnosis. Despite finding insufficient evidence that Petitioner suffered from PTSD while in the service, the Majority did find sufficient evidence to conclude that the Petitioner was suffering from gender dysphoria during her service, which likely contributed to her alcohol abuse and feelings of depression. Specifically, the Majority found it plausible that Petitioner’s inability to disclose her internal feelings due to the DADT policy contributed to a situation in which she turned to alcohol and other maladaptive coping mechanisms. Applying liberal consideration, the Majority also found, contrary to the AO findings, that there is sufficient evidence that Petitioner’s mental health conditions may have contributed to the misconduct for

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which she was discharged. Like alcohol abuse, UA is a common maladaptive coping mechanism and avoidance behavior employed by Service members dealing with undiagnosed and untreated mental health conditions. Accordingly, the Majority determined that there was potential nexus between Petitioner's mental health conditions and the misconduct for which she was discharged, and that her conditions therefore mitigated that misconduct.

In addition to applying liberal consideration to Petitioner's claimed mental health conditions and the effect that they may have had upon the misconduct for which she was discharged in accordance with references (b) – (d), the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, the mitigating effect of Petitioner's mental health conditions upon her misconduct, as discussed above; the entirety of Petitioner's naval service record, which reflected that she was a capable Sailor apart from her misconduct and reportedly poor attitude; Petitioner's post-service contributions to her community, including volunteer work and recent professional accomplishments which include providing mental health services; the letters of support provided with Petitioner's application attesting to her character, work ethic, and effective rehabilitation efforts; Petitioner's relative youth and immaturity at the time of her misconduct; and the passage of time since Petitioner's discharge. Having determined that these mitigating factors outweighed the misconduct for which Petitioner was discharged, the Majority found that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interest of justice. Although it found partial relief to be warranted given the totality of the circumstances, the Majority found Petitioner's misconduct to be too frequent and significant to warrant the extraordinary relief of an upgrade of her characterization of service to fully honorable as she requested.

#### MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that her service was characterized as general (under honorable conditions).

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on Petitioner's naval record.

#### MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority also applied liberal consideration to the Petitioner's claimed mental health conditions and the effect that they had upon her misconduct in accordance with references (b) – (d). In this regard, the Minority concurred with the Majority conclusion that there was

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insufficient evidence to establish that Petitioner suffered from PTSD during her military service. The Minority also concurred with the Majority conclusion that there is sufficient evidence that the Petitioner was suffering from gender dysphoria during her service, which may have contributed to her alcohol abuse and feelings of depression. The Minority did not, however, agree with the Majority conclusion that these mental health conditions mitigated the misconduct for which Petitioner was discharged. Rather, the Minority concurred with the AO conclusion that there was insufficient evidence that Petitioner's misconduct was attributable to Petitioner was discharged from the Navy after she was UA for approximately a month and missing her ship's movement, after having previously received NJP and a SCM for the same type of misconduct. While it is true that UA may be an avoidance behavior related to mental health conditions, the record reflects that that was not the reason for the Petitioner's misconduct. She testified during her SCM hearing that she made a conscious decision to go UA after returning to base rather than risk her fiancée's being towed if she boarded the ship. There simply is no rational nexus between such extraordinarily poor judgment and Petitioner's mental health condition. Further, Petitioner provided no explanation or context for how her gender dysphoria and related mental health conditions contributed to her decision to go UA on multiple occasions. She did suggest that she likely would have remained in the Navy if she had been afforded the mental health treatment that she needed, but it seems unlikely that such treatment would have had that effect given her condition. Finally, Petitioner's own statement reflects that she was well-adjusted and successful in civilian society for almost 20 years after her discharge, despite her mental health conditions and the stigma of her OTH discharge, and that it was only after she came out to her spouse as transgender that her life took a downward turn. That Petitioner was able to function at such a high level as a civilian living as man and a father for such a long time despite the internal conflicts caused by her mental health conditions suggests that those conditions were not the cause of her inability to function as a Sailor. The Minority does not downplay the significance of the internal struggle that Petitioner must have endured; it simply did not believe that that struggle contributed to her discharge from the Navy.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (e). In this regard, the Minority considered the same potentially mitigating factors as did the Majority. However, having found that Petitioner's mental health conditions did not mitigate the misconduct for which she was discharged, the Minority concluded that the severity and frequency of Petitioner's misconduct far outweighed the factors which might warrant equitable relief. In reaching this conclusion, the Minority noted that the Navy attempted to provide Petitioner with Level III substance abuse rehabilitation treatment, but that Petitioner refused such efforts. Accordingly, her claim to have been denied the treatment which may have saved her career was without merit. The Minority believed that Petitioner's OTH characterization of service was, and remains, appropriate given the totality of the circumstances.

**MINORITY RECOMMENDATION:**

In view of the above, the Minority of the Board recommends that no corrective action be taken on the Petitioner's naval record.

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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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

12/1/2022

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and direct the relief recommended by the Majority as stated above.)
- MINORITY Recommendation Approved (Deny Relief)
- Petitioner's Request Approved (Full Relief – I concur with the Majority's conclusion that equitable relief is warranted in the interest of justice, but do not believe that the Majority's recommendation goes far enough in that regard. Accordingly, I direct the relief recommended by the Majority, except that the Petitioner's service is to be characterized as "honorable." Additionally, Petitioner is to be issued an Honorable Discharge certificate.

12/27/2022

[REDACTED]

Assistant General Counsel (M&RA)

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